

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JOSEPH A. POGGIOLI,

Plaintiff,

-against-

PATRICK J. CARROLL, individually,  
And the CITY OF NEW ROCHELL, New York,

Defendants.  
-----X

07 Civ 6674 (CLB)

**AFFIRMATION IN  
OPPOSITION TO  
DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT**

DRITA NICAJ, an attorney duly admitted to this Court and the Courts of the State of New York, hereby affirms under penalty of perjury that the following statement is true:

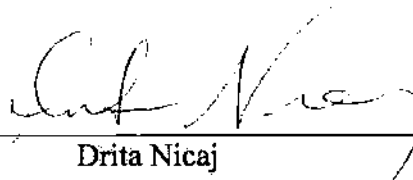
1. I am counsel to Plaintiff and submit this affirmation in opposition to Defendants' Motion for Summary Judgment.
2. Annexed hereto as Exhibit 1 is a copy of Plaintiff's Proposed First Amended Complaint in Poggioli v. Carroll, 07 Civ 6674.
3. Annexed hereto as Exhibit 2 is a copy of Plaintiff's First Amended Complaint in Poggioli v. Murphy, et al., 06 Civ 12893.
4. Annexed hereto as Exhibit 3 is a copy of the deposition transcript of Joseph A. Poggioli dated February 1, 2007 in the case Poggioli v Murphy, et al.
5. Annexed hereto as Exhibit 4 is a copy of the deposition transcript of Joseph A. Poggioli dated October 30, 2007 in the case Poggioli v Carroll.
6. Annexed hereto as Exhibit 5 are copies of the relevant portions of the May 16, 2006 Poggioli disciplinary hearing.

7. Annexed hereto as Exhibit 6 are copies of the relevant portions of the June 19, 2006 Poggioli disciplinary hearing.

8. Annexed hereto as Exhibit 7 are copies of the relevant portions of the July 7, 2006 Poggioli disciplinary hearing.

9. For the reasons set forth in Plaintiff's accompanying memorandum of law, it is submitted that Defendants' motion should in all respects, be denied.

Dated: White Plains, New York  
December 21, 2007

  
Drita Nica

**EXHIBIT 1**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JOSEPH A. POGGIOLI,

Plaintiff,

-against-

PATRICK J. CARROLL, individually, and  
the CITY OF NEW ROCHELLE, New York,

Defendants.  
-----X

07 Civ. 6674 (CLB)

**PROPOSED FIRST AMENDED  
COMPLAINT**

**Jury Trial Demanded**

Plaintiff JOSEPH A. POGGIOLI, by his attorneys Lovett & Gould, LLP, for his First Amended Complaint respectfully alleges:

**NATURE OF THE ACTION**

1. This is an action for compensatory and punitive damages, proximately resulting from Defendants' conduct as engaged in under color of the laws of the State of New York, for violations of Plaintiff's rights as guaranteed him by reason of the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §1983.

**JURISDICTION**

2. The Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331, 1343.

### THE PARTIES

3. Plaintiff JOSEPH POGGIOLI, Jr. is a citizen of the United States, a domiciliary of the State of New York, and a resident of the Northern Counties. At all times relevant to this complaint, prior to July 20, 2007, he had been continuously employed for in excess of twenty years as a Police Officer by the City of New Rochelle.

4. Defendant PATRICK J. CARROLL (hereinafter "Carroll"), who is sued in his individual and personal capacities only, at all times relevant to this complaint was the duly appointed Police Commissioner of the Defendant City. In 1994 Plaintiff filed in this Court a civil rights action alleging *inter alia* a violation of his Fourth Amendment rights by Carroll, the City of New Rochelle, and other high ranking members of the City's Police Department. Poggioli v. Carroll, 94 Civ. 8313 (BDP)(hereinafter "Poggioli I"). Evidence adduced at trial in that action demonstrated that the Defendants in Poggioli I intentionally destroyed Plaintiff's personal property, broke into his departmental locker, and unlawfully reviewed/copied Plaintiff's privileged notes of a meeting he had with his then PBA attorney. None of the Defendants in Poggioli I was arrested, prosecuted and/or subjected to disciplinary action for their unlawful conduct. On November 26, 1996, a jury verdict was entered in Plaintiff's favor in the amount of \$155,000 in compensatory and punitive damages as a result of which Carroll was infuriated and harbored malice and bad faith towards Plaintiff and determined to take action against Plaintiff in the event an opportunity arose to do so.

5. Defendant CITY OF NEW ROCHELLE, New York (hereinafter "City") is a municipal corporate subdivision of the State of New York duly existing by reason of and pursuant to the laws of the said State.

### THE FACTS

6. On or about October 14, 2006, Plaintiff filed Poggioli v. Murphy, 06 Civ. 12893 (CLB) alleging (against amongst others Defendants Carroll and the City) violations of his rights as guaranteed by the First and Fourteenth Amendments, 42 U.S.C. § 1983. In that connection Plaintiff detailed in his complaint a series of matters of public concern including extensive corruption and criminal wrongdoing as engaged in by members of the New Rochelle Police Department and the New Rochelle City Court.

7. Plaintiff also engaged in protected activities while he was the President of the Police Benevolent Association (PBA) during the period from January 1, 2001 through December 31, 2003, which was known by Defendants, including expressing concern that:

a. Antiquated police equipment posed a substantial risk to the safety of members of Police Department and to the public; and

b. The shortage of manpower in the Police Department presented a substantial danger to the members of the Police Department and to the public.

8. Plaintiff continued to raise concern regarding the issues referenced in the preceding paragraph "7" after his tenure as PBA President had ended, which was known to Defendants until July 20, 2007 as referenced *infra*.

9. On or about April 24, 2007, in connection with the rigged disciplinary proceeding referenced in the 2006 filing, Hearing Officer Robert J. Ponzini generated a substantially falsified and/or materially inaccurate report and recommendation finding Plaintiff guilty of disciplinary charges. Ponzini did so in accordance with his well established and publicly known reputation for always and/or virtually always finding governmental employees guilty of whatever disciplinary charges have been leveled against them by, *inter alia*, the City of White Plains, the County of

Westchester, and the City of New Rochelle. In fact by reason of his established record of convicting such employees, he was appointed to preside over the Poggioli disciplinary since the appointing authority knew that in exchange for pecuniary gain Ponzini would convict Plaintiff regardless of the evidence.

10. On or about June 25, 2007, Ponzini earned the balance of his fees from the City of New Rochelle by recommending that Plaintiff be terminated.

11. On July 20, 2007, Defendants in writing terminated Plaintiff's employment, a termination that was motivated in whole and/or substantial respect by:

- a. Plaintiff's 2006 filing and/or the substantive allegations contained in that complaint;
- b. Evidence of corruption rampant in the City's government, including its Court and Police Department, as adduced by Plaintiff during the disciplinary proceeding as presided over by Ponzini; and/or
- c. Plaintiff's expressions of concern referenced in paragraph "7" and "8" *supra*.

12. Members of the Police Department who have engaged in criminal wrong doing on the job (as known by Defendants and identified during Plaintiff's disciplinary hearing) as well as other members of the Department who wholesale violated and continue to violate the federal civil rights of the only Police Officer of Middle Eastern descent employed by the City have neither been subjected to formal disciplinary charges nor terminated from the City's employ. Instead that criminal misconduct and those civil rights violations have been encouraged, condoned and ratified by Defendants while subjecting Plaintiff's to disciplinary action, including termination without having a rational basis for doing so.

13. As a proximate result of Defendants' retaliatory, malicious and bad faith selective conduct which had no rational basis, Plaintiff has been caused to suffer: substantial pecuniary losses

and lost benefits; public humiliation; public embarrassment; shame; anxiety; destruction of his professional career; emotional upset; and he has otherwise been rendered sick and sore.

**AS AND FOR A FIRST CLAIM**

14. Repeats and realleges as if fully set forth the allegations of fact contained in paragraphs "1" to "13", inclusive.

15. Under the premises Defendants violated Plaintiff's rights as guaranteed by the First Amendment to the United States Constitution, 42 U.S. C. § 1983.

**AS AND FOR A SECOND CLAIM**

16. Repeats and realleges as if fully set forth the allegations of fact contained in paragraphs. "1" to "13", inclusive.

17. Under the premises Defendants violated Plaintiff's rights as guaranteed by the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §1883 because: (1) they intended to retaliate against Plaintiff because he exercised his constitutional rights; (2) they were motivated by a malicious or bad faith intent to injure Plaintiff; and/or (3) that the Defendants do not have a rational basis for the difference in the treatment of Plaintiff.

WHEREFORE a judgment is respectfully demanded:

a. Awarding against Defendant Carroll such punitive damages as the jury may impose,

b. Awarding against both Defendants such compensatory damages as the jury may determine,

c. Awarding reasonable attorney's fees and costs, and,



d. Granting such other and further relief as to the court seems just and proper.

Dated: White Plains, N.Y.  
December 20, 2007

LOVETT & GOULD, LLP  
Attorneys for Plaintiff

By: \_\_\_\_\_  
Drita Nicaj (DN 0966)  
222 Bloomingdale Road  
White Plains, New York 10605  
914-428-8401

**EXHIBIT 2**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

JOSEPH A. POGGIOLI,

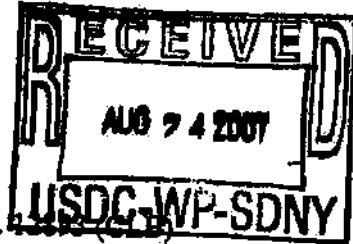
Plaintiff,

-against-

ANTHONY MURPHY, individually, KEVIN  
KEALY, individually, PATRICK J. CARROLL,  
individually, MYRON JOSEPH, individually,  
and the CITY OF NEW ROCHELLE, New York,

Defendants.

---



06 Civ. 1333 (CLB)

**FIRST AMENDED  
COMPLAINT**

**Jury Trial Demanded**

Plaintiff JOSEPH A. POGGIOLI, by his attorneys Lovett & Gould, LLP, for his  
complaint respectfully alleges:

**NATURE OF THE ACTION**

1. This is an action for compensatory and punitive damages proximately resulting from Defendants' conduct, engaged in under color of New York State law pursuant to a common retaliatory plan, that violated Plaintiff's rights as guaranteed by reason of the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §1983.

**JURISDICTION**

2. The Court's jurisdiction is invoked pursuant to 28 U.S.C. §§1331, 1343.

### **THE PARTIES**

3. Plaintiff is a citizen of the United States, a domiciliary of the State of New York and a resident of the Northern Counties. At all times relevant to this complaint he was employed as a Police Officer by the Defendant City.

4. Defendant ANTHONY MURPHY (hereinafter "Murphy"), who is sued in his personal and individual capacities, at all times relevant to this complaint was employed by the Defendant City as Deputy Commissioner of Police except as otherwise referenced *infra*.

5. Defendant KEVIN KEALY (hereinafter "Kealy"), who is sued in his personal and individual capacities, at all times relevant to this complaint was employed by the Defendant City as a police Captain.

6. Defendant PATRICK J. CARROLL (hereinafter "Carroll"), who is sued in his personal and individual capacities, at all times relevant to this complaint was employed by the Defendant City as Commissioner of Police.

7. Defendant MYRON JOSEPH (hereinafter "Joseph"), who is sued in his personal and individual capacities, at all times relevant to this complaint was employed by the Defendant City as a police Sergeant assigned to the Traffic Division.

8. Defendant CITY OF NEW ROCHELLE, New York (hereinafter "City") is a municipal corporate subdivision of the State of New York duly existing by reason of and pursuant to the laws of said State.

### THE FACTS

9. In 1994 Plaintiff filed in this Court a civil rights action alleging *inter alia* a violation of his Fourth Amendment rights by Carroll, Murphy (then a police Captain), the City of New Rochelle, and other high ranking members of the City's Police Department. Poggioli v. Carroll, 94 Civ. 8313 (BDP)(hereinafter "Poggioli I"). Evidence adduced at trial in that action demonstrated that the Defendants in Poggioli I intentionally destroyed Plaintiff's personal property, broke into his departmental locker, and unlawfully reviewed/copied Plaintiff's privileged notes of a meeting he had with his then PBA attorney. None of the Defendants in Poggioli I was arrested, prosecuted and/or subjected to disciplinary action for their unlawful conduct.

10. On November 26, 1996, a jury verdict was entered in Plaintiff's favor in the amount of \$155,000 in compensatory and punitive damages as a result of which Murphy and Carroll were both infuriated and determined to retaliate against Plaintiff in the event an opportunity arose to do so.

11. In April of 2005 that opportunity arose on the basis of a complaint made by Joseph to Kealy regarding an incident where Poggioli was accused of having submitted an overtime slip for an off-duty police assignment for approximately one hour of time that he claimed to have worked but which Joseph, Kealy, Murphy and Carroll collectively agreed to accuse him of not working.

12. In that connection the amount of money in controversy was approximately \$67, a portion of which Defendants knowingly retained (despite their allegation that the private sector contractor [Persico Construction] who paid for the services Poggioli

claimed to have worked should not have paid that money to the City at all) for expenses incurred in the Police Department. The balance of that sum was paid by Defendants to Plaintiff -- notwithstanding their allegation that he was not entitled to be paid.

13. Plaintiff also engaged in protected activities while he was the President of the Police Benevolent Association (PBA) during the period from January 1, 2001 through December 31, 2003, which was known by Defendants, including expressing concern that:

a. Antiquated police equipment posed a substantial risk to the safety of members of Police Department and to the public; and

b. The shortage of manpower in the Police Department presented a substantial danger to the members of the Police Department and to the public.

14. Plaintiff continued to raise concern regarding the issues referenced in the preceding paragraph "13" after his tenure as PBA President had ended, which was known to Defendants until the termination of his employment in or about July 20, 2007 -- the subject of a related Court filing [Poggioli v. Carroll, 07 Civ. 6674(CLB)].

15. Based upon the events referenced in the preceding paragraphs "11" through "14", Defendants in or about May of 2005 entered into an agreement to retaliate against Poggioli for having previously successfully sued Carroll, Murphy and *inter alia* the City and for expressing his concern.

16. In furtherance of that plan and on May 19, 2005, Kealy preferred against Plaintiff civil service disciplinary charges accusing him of having submitted the referenced overtime request for time that he allegedly did not perform services.

17. In that connection: a) Defendants agreed to retain the services of a "hearing officer" well known in the legal community to not only always rule in favor of the

municipal corporation paying his fees but to actually fabricate evidence to bolster his findings of "fact"; and b) both Joseph and Kealy agreed with their co-defendants to testify against Plaintiff with a view towards terminating his employment.

18. Over a period of months Defendants then prosecuted, at a cost of substantially in excess of \$50,000, the retaliatory disciplinary proceeding having pre-determined that Plaintiff will be found guilty and terminated from the City's employ. During the course of that prosecution Kealy was overheard by the President of the City's PBA discussing in a hallway a self-evident dilemma they faced -- how to explain prosecuting Plaintiff for requesting overtime money for time allegedly not worked when numerous Police Officers routinely engaged in the same conduct with respect to which Plaintiff stands accused.

19. In engaging in that retaliatory plan Defendants knowingly and deliberately failed to take law enforcement action, with respect to on-going criminal wrongdoing that permeated both the Police Department and the New Rochelle City Court (claimed by the City to be one of its "Departments"). As a result:

a. Police Detective Robert D'Andrea was not arrested, criminally prosecuted, and/or terminated for stealing evidence (a computer) from the Department's Property Clerk's Office and when caught discarding the evidence in the garbage. Subsequently D'Andrea, who was recruited by Defendants to testify against Plaintiff in the disciplinary proceeding, was reassigned as the Department's Communications Supervisor in charge of intra-departmental security systems.

b. The City Marshall, an attorney, openly operates a private law practice out of the Courthouse using, at taxpayers' expense, on-duty City and State employees' services to draft his private clients' wills and contracts for the sale of real property --

stealing in that process government-owned paper, copiers, computer equipment, and other office supplies.

c. One female employed in the Court Clerk's Office openly and admittedly has repeated engaged with impunity in the felonious sale of controlled substances (Vicodin and Valium) in that Office to other employees.

d. That same female while working in the Clerk's Office has also openly and admittedly engaged with impunity in felony possession of controlled substances (Vicodin and Valium) that had been feloniously sold to her by certain of her co-workers.

e. That female employee's multiple co-workers, who have under oath been identified by name as having engaged in the felony sale of controlled substances to that female, have neither been arrested, prosecuted nor subjected to disciplinary charges with a view towards termination.

f. Another female employee working in the City Court Clerk's Office has openly and admittedly engaged in grand larceny, stealing in excess of \$3,000 from funds received by and belonging to the Court -- later bragging in testimony that she was "never charged" with that theft;

g. A police Detective repeatedly tampered with Plaintiff's security door access card for the Police Department, disabling the card and preventing Plaintiff from entering Headquarters. Although that conduct constituted a crime, no arrest, criminal and/or disciplinary prosecution resulted,

h. A male Court Officer employed in the City Court has also openly and admittedly engaged in the same grand larceny -- committed with his now-fiancé -- as a



result of which he was never arrested, charged and/or brought up on disciplinary charges with a view towards determination, and *inter alia*,

i. Three members of the Police Department were paid for off-duty work, which they did not perform and no disciplinary action was taken against them.

20. As a proximate result of Defendants' conduct Plaintiff has been: subjected to retaliation for having engaged in constitutionally protected speech; selectively prosecuted; caused to suffer pecuniary losses; publicly humiliated; publicly embarrassed; suffered irreparable damage to his professional career and reputation; rendered anxious; emotionally upset; and otherwise rendered sick and sore.

#### **AS AND FOR A FIRST CLAIM**

21. Repeats and realleges as if fully set forth the allegations of fact contained in paragraphs "1" to "20", inclusive.

22. Under the premises Defendants' intentional conduct violated Plaintiff's rights as guaranteed by the First Amendment to the United States Constitution, 42 U.S.C. §1983.

#### **AS AND FOR A SECOND CLAIM**

23. Repeats and realleges as if fully set forth the allegations of fact contained in paragraphs "1" to "20", inclusive.

24. Under the premises Defendants' intentional conduct violated Plaintiff's right to Equal Protection as guaranteed by reason of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §1983.

WHEREFORE judgment is respectfully demanded:

- a. Awarding on the First and Second Claims as against the individually named Defendants such punitive damages as the jury may impose,
- b. Awarding on the First and Second Claims as against all Defendants such compensatory damages as the jury may determine,
- c. Awarding reasonable costs and attorney's fees, and,
- d. Granting such other and further relief as to the Court seems just and proper.

Dated: White Plains, N.Y.  
August 23, 2007

LOVETT & GOULD, LLP

Attorneys for Plaintiff

By: *Drita Nicaj*  
Drita Nicaj (DN 0966)

222 Bloomingdale Road  
White Plains, New York 10605  
914-428-8401

**EXHIBIT 3**

J. POGGIOLI

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

JOSEPH A. POGGIOLI,

Plaintiff,

Case No.:

-against-

106 CIV 12893

ANTHONY MURPHY, Individually, KEVIN KEALY,  
Individually, PATRICK J. CARROLL, Individually,  
MYRON JOSEPH, Individually, and the CITY of  
NEW ROCHELLE,

Defendants.

-----X

3 Gannett Drive  
White Plains, New York  
February 1, 2007  
10:15 AM

Examination before Trial of PLAINTIFF,  
JOSEPH A. POGGIOLI, held pursuant to Notice, at  
the above time and place, before a Notary  
Public of the State of New York.

J. POGGIOLI

1 A P P E A R A N C E S :

2 LOVETT & GOULD, LLP  
3 Attorney for Plaintiff  
4 222 Bloomingdale Road  
5 White Plains, NY 10605  
6 BY: JONATHON LOVETT, ESQ.  
7 jlovett@lovett-gould.com

8 WILSON, ELSE, MOSKOWITZ, EDELMAN &  
9 DICKER, LLP  
10 Attorney for Defendants  
11 3 Gannett Drive  
12 White Plains, NY 10604  
13 BY: PETER A. MEISELS, ESQ.  
14 peter.meisels@wilsonelser.com

15 ALSO PRESENT:

16 Latlit K. Loomba - Wilson Elser  
17 Sargent Anthony Murphy  
18 Captain Kevin Kealy  
19 Myron Joseph  
20  
21  
22  
23  
24

1 IT IS HEREBY STIPULATED, by and between the  
2 attorneys for the respective parties hereto, that:

3  
4 All rights provided by the C.P.L.R., and Part 221 of  
5 the Uniform Rules for the Conduct of Depositions,  
6 including the right to object to any question,  
7 except as to form, or to move to strike any  
8 testimony on this examination is reserved; and in  
9 addition, the failure to object to any question or  
10 to move to strike any testimony at this examination  
11 shall not be a bar or waiver to make such motion at,  
12 and is reserved to, the trial of this action.

13  
14 This deposition may be sworn to by the witness being  
15 examined before a Notary Public other than the  
16 Notary Public before whom this examination was  
17 begun, but the failure to do so or to return the  
18 original of this deposition to counsel, shall not be  
19 deemed a waiver of the rights provided by Rule 3116  
20 of the C.P.L.R. and shall be controlled thereby.

21  
22 The filing of the original of this deposition is  
23 waived.

1 JOSEPH POGGIOLI,  
2 a Plaintiff, having been first duly sworn by  
3 Ruthayn Sgaglio, a Notary Public of the State of  
4 New York, and stating his address as 475 North  
5 Avenue, New Rochelle, New York, 10801, was examined  
6 and testified as follows:

7 EXAMINATION BY

8 MR. MEISELS:

9 Q Mr. Poggioli, my name is Peter Meisels.  
10 I'm going to ask you some questions about your  
11 complaint. If they're not clear, please tell me and  
12 I will rephrase them.

13 I'm going to show you what's been  
14 premarked as Defendant's A for identification. Can  
15 you identify that document?

16 A This is the --

17 MR. LOVETT: Look at the whole document.

18 (Witness perusing documents.)

19 (Discussion held off the record.)

20 A I'm going to read it.

21 Q Yes, please do.

22 A Okay.

23 Q Mr. Poggioli, have you had a chance to  
24 review the first eight pages of Defendants' A?

1 A Yes.

2 Q Can you identify the document that's  
3 contained in the first eight pages?

4 A Yes.

5 Q What is it?

6 A This is -- my attorney set these papers up  
7 for my lawsuit against the City of New Rochelle.

8 Q Did you have a chance to review that  
9 before today?

10 A Yes.

11 Q You reviewed it again this morning?

12 A Yes.

13 Q Is the information contained in the first  
14 eight pages accurate?

15 MR. LOVETT: Objection as to form.

16 Q To the best of your knowledge --  
17 withdrawn.

18 In reviewing the first eight pages of  
19 the document, did you notice anything that you  
20 believe to be inaccurate?

21 A I don't think so, no.

22 Q As far as you know, the allegations made  
23 in those first eight pages are accurate?

24 A Yes.



1 Q If you could please turn to page three of  
2 the document.

3 MR. LOVETT: The numbered page three?

4 MR. MEISELS: Yes.

5 Q In particular to paragraph nine at the top  
6 of the page. Do you see that?

7 A Yes.

8 Q I'm going to ask you a question about it.  
9 Paragraph nine references a lawsuit,  
10 Poggioli versus Carroll, with an index number of  
11 94 Civ 8313; is that correct?

12 A Yes.

13 Q As far as you know, is that your prior  
14 lawsuit that you brought?

15 A I believe so, yes.

16 Q Do you recall who the defendants were in  
17 that lawsuit?

18 A Yes.

19 Q Can you tell us who they were?

20 A Police Commissioner Carroll, Captain  
21 Anthony Murphy at that time.

22 Q Were there any other defendants that you  
23 can recall?

24 A Yes.

1 Q Who were they?

2 A Lieutenant Cappio.

3 Q Were there any others?

4 A Yes.

5 Q Who were they?

6 A That was the City of New Rochelle.

7 Q Were there any other defendants?

8 A Yes, I believe there is one more.

9 Q As you sit here today, do you recall who  
10 it was?

11 A I can't think offhand who it was.

12 Q Now, referring to the second sentence of  
13 paragraph nine, it says, "Evidence produced at trial  
14 in that action demonstrated that the defendants in  
15 Poggioli 1 intentionally destroyed plaintiff's  
16 personal property, broke into his departmental  
17 locker and unlawfully reviewed/copied plaintiff's  
18 priveleged notes of a meeting he had with his then  
19 PBA attorney." Do you see?

20 A Yes.

21 Q Now, when the sentence indicates  
22 "destroyed plaintiff's personal property," what  
23 personal property did that relate to?

24 A That was my lock.

1 Q The next phrase, "broke into his  
2 departmental locker," that would be the same  
3 property?

4 A No, the lock is different from the locker.

5 Q So the personal property that they  
6 destroyed was the lock; is that right?

7 A Yes.

8 Q It was your locker that was broken into?

9 A Yes.

10 Q Now, in reference to the next phrase that  
11 says, "unlawfully reviewed/copied plaintiff's  
12 privileged notes of a meeting he had with his then  
13 PBA attorney," do you see that?

14 A Yes.

15 Q Did that relate to a pending disciplinary  
16 action that you had?

17 A Yes.

18 Q Was that disciplinary action based upon  
19 claims relating to off-duty employment?

20 A No.

21 Q What did that discipline action relate to?

22 A It was alleging misconduct, I believe.

23 Q Do you recall what the alleged misconduct  
24 was?

1           A     I don't remember.

2           Q     Do you recall whether that disciplinary  
3 proceeding had anything to do with working at the  
4 Classic golf event?

5           A     It might have.

6           Q     If you can go to paragraph ten, the next  
7 paragraph.

8           A     Yes.

9           Q     It says, "On November 26, 1996, a jury  
10 verdict was entered in plaintiff's favor in the  
11 amount of \$155,000 in compensatory and punitive  
12 damages, as a result of which Murphy and Carroll  
13 were both infuriated and determined to retaliate  
14 against plaintiff in the event an opportunity arose  
15 to do so." Do you see that?

16          A     Yes.

17          Q     What is the basis for your belief that  
18 Mr. Murphy was infuriated as a result of that jury  
19 verdict?

20          A     It's obvious they were not happy that they  
21 lost the case.

22          Q     How did that become obvious to you?

23          A     It was mentioned when they failed to  
24 adhere to the court order during testimony that they

1 felt that the results were unfair.

2 Q Was that the basis of your belief that  
3 Mr. Murphy was infuriated?

4 A Yes.

5 Q Can you tell me what the basis is for your  
6 belief that Mr. Carroll was infuriated?

7 A I believe he said the same thing.

8 Q Now, in the same sentence, it says,  
9 "determined to retaliate against plaintiff." What  
10 is the basis for your belief that Mr. Murphy was  
11 determined to retaliate against you?

12 A I felt the decision was unfair.

13 Q What was the basis for your belief that  
14 Mr. Carroll was determined to retaliate against you?

15 A Same answer.

16 Q He thought it was unfair?

17 A Unfair, yes.

18 Q At that time Mr. Murphy was a captain?

19 A Yes.

20 Q At that point Mr. Carroll was the  
21 commissioner?

22 A Yes.

23 Q After that verdict was entered, do you  
24 recall whether or not the case was ultimately

1 settled between you and the defendants?

2 A Yes, it was.

3 Q In the last -- withdrawn.

4 Do you recall what year that case was  
5 settled in?

6 A I believe it was 1996.

7 Q The same year the verdict was entered?

8 A Yes.

9 Q In the last seven years, in other words  
10 from 1999 to 2007, have you ever had occasion to  
11 have been disciplined in the course of your duties?

12 A In what way?

13 Q In any way.

14 (Discussion held off the record.)

15 Mr. Poggioli, I'm going to go back to  
16 my question I'd asked you about whether you had been  
17 disciplined in the last seven years, and you asked  
18 in what way, I believe, and I said in any way.  
19 Let's go back to that.

20 A So you mean reprimanded by a superior  
21 officer verbally?

22 Q In any way, whether any penalty was  
23 imposed for any alleged violation in the last seven  
24 years.

1           A       I would need department records to look at  
2       that.

3           Q       So you don't recall?

4           A       It could have been but I don't have that  
5       information in front of me.

6           Q       So as you sit here today, do you recall  
7       whether or not any discipline had been imposed on  
8       you in the last seven years?

9           A       Possibly verbally.

10          Q       Do you recall the incidences when that  
11       occurred?

12          A       No.

13          Q       Have you ever, in the last seven years,  
14       been penalized in any other way, other than  
15       verbally?

16          A       Again, I would need the department records  
17       to refresh my memory.

18          Q       I'm going to ask you the same question but  
19       over a wider period of time. After the settlement  
20       in your 1994 case up until today, have you ever been  
21       disciplined by the New Rochelle Police Department?

22          A       I may have been.

23          Q       At any time did anyone inform you they  
24       were seeking your termination?

1 A If they were seeking my termination?

2 Q Correct.

3 A You mean personally tell me they were  
4 looking to fire me?

5 Q Correct.

6 A No.

7 Q From the time that your 1994 case was  
8 settled up until today, have you ever been fined or  
9 required to give up pay days as a result of any  
10 disciplinary action brought by the New Rochelle  
11 Police Department?

12 MR. LOVETT: Object to form. You can  
13 answer.

14 A Since what time is that again?

15 Q From the time the 1994 case was settled to  
16 today.

17 A Again, I don't have that information in  
18 front of me.

19 Q I'd ask you to take a look at paragraph 11  
20 of the complaint. It says, "In April of 2005, that  
21 opportunity arose on the basis of a complaint made  
22 by Joseph Kealy regarding an incident where Poggioli  
23 was accused of having submitted an overtime slip for  
24 an off-duty police assignment for approximately one



1 hour of time that he claimed to have worked but  
2 which Joseph Kealy, Murphy and Carroll collectively  
3 agree to accuse him of not working." Do you see  
4 that?

5 A Yes.

6 Q Do you know which off-duty police  
7 assignment this paragraph refers to?

8 A Yes.

9 Q Could you tell us what it was.

10 A It was a traffic detail in New Rochelle.

11 Q Do you know which company needed the  
12 assistance of the police department?

13 A Yes.

14 Q What was that?

15 A Persico.

16 Q The Persico Contracting Company?

17 A Yes.

18 Q Where was it that they needed the  
19 assistance?

20 A The intersection of Caligni and Webster.

21 Q Do you know what the particular assignment  
22 was on that particular day?

23 A Could you clarify the question.

24 Q Do you recall the particular date on which

1 Persico Contracting needed the assistance of a  
2 police officer?

3 MR. LOVETT: Object as to form. You can  
4 answer.

5 A Which particular day they requested?

6 Q Right.

7 A I believe they requested for many days.

8 Q Was there a particular date in April on  
9 which you were supposed to work there?

10 A A day I did work there, yes.

11 Q Was that April 20, 2005?

12 A Yes.

13 Q Did you submit an overtime slip for that  
14 work?

15 A Yes, I did.

16 Q How many hours of work did you perform  
17 that day for Persico Contracting?

18 A I don't recall.

19 Q Did you sign in and sign out for that  
20 work?

21 A Yes.

22 Q From the time that you arrived at that job  
23 site -- withdrawn.

24 After you arrived -- withdrawn.

1                   After you arrived at the job site,  
2 did you remain there until your work was completed?

3           A     I don't recall.

4           Q     During the course of your assignment, did  
5 you return to police headquarters?

6           A     During the assignment?

7           Q     Correct.

8           A     I believe not.

9           Q     Now, looking at the next-to-last sentence  
10 of paragraph 11 where it says that "Joseph, Kealy,  
11 Murphy and Carroll collectively agreed to accuse him  
12 of not working," my question, what is the basis for  
13 your belief that Joseph, Kealy, Murphy and Carroll  
14 entered into such a agreement?

15          A     There was an investigation and those  
16 parties were all involved.

17          Q     Am I correct that that investigation is  
18 the basis for your belief that they agreed to accuse  
19 you of not working?

20               MR. LOVETT: Objection to form. You can  
21 answer.

22          A     Yes.

23          Q     I'd ask that you take a look at  
24 paragraph 12. It says, "In that connection, the

1 amount of money in controversy was approximately  
2 \$67." Do you see?

3 A Yes.

4 Q What is the basis for your belief that the  
5 amount of money involved was \$67?

6 A That's approximately time and a half of my  
7 hourly wage.

8 Q Do you recall what your hourly rate was?

9 A 2005, I think it was about \$39, \$40 an  
10 hour, I believe. Approximately.

11 Q That 67 would be equivalent to one and a  
12 half times whatever your hourly rate was for 2005;  
13 is that right?

14 A Approximately.

15 Q Based upon your contention that the amount  
16 of money in controversy was approximately \$67, does  
17 that indicate that you actually worked for one hour?

18 MR. LOVETT: Objection to form. You can  
19 answer.

20 A Yes.

21 Q Turn the page, please. Did you ever --  
22 withdrawn.

23 Were you actually compensated by the  
24 police department for that hour of work?

1 A Yes.

2 Q Did you ever return the money?

3 A No.

4 Q You kept the money?

5 A It was my money.

6 Q So the answer is yes, you did keep it?

7 A Yes.

8 Q I ask you to take a look at paragraph 13,  
9 which says, "Based upon the event referenced in the  
10 preceding paragraphs 11 and 12, defendants in or  
11 about May of 2005 entered into an agreement to  
12 retaliate against Poggioli for having previously  
13 successfully sued Carroll, Murphy and The City." Do  
14 you see that?

15 A Yes.

16 Q What is the basis for your belief that the  
17 defendants in this case entered into an agreement to  
18 retaliate against you?

19 A There's obviously there are hard feelings  
20 from the federal lawsuit that have prevailed to this  
21 date.

22 (Short recess taken.)

23 Q Mr. Poggioli, was Sergeant Joseph a  
24 defendant in that 1994 lawsuit?

1 A No.

2 Q Was Captain Kealy a defendant in that  
3 lawsuit?

4 A No.

5 Can I clarify on something?

6 Q Absolutely.

7 A The \$67 that we talked about previously  
8 about getting it for the hourly pay, I don't get  
9 that full amount, the police department gets some of  
10 that.

11 Q So you didn't get the whole \$67?

12 A Yes, that's correct.

13 Q You got less than that?

14 A That's correct. I think the correct  
15 amount was \$57 at that time. Thank you.

16 Q Going on to paragraph 14 of the complaint,  
17 it says, "In furtherance of that plan and on May 19,  
18 2005, Kealy preferred against plaintiff civil  
19 service disciplinary charges accusing him of having  
20 submitted the referenced overtime requests for time  
21 that he allegedly did not perform services"; is that  
22 correct?

23 A Yes.

24 Q When you allege Kealy preferred discipline

1 charges, does that mean that he signed them?

2 A I believe that he had them written up.

3 Q Do you know who actually signed the  
4 charges?

5 A I'm sure that -- I don't have them in  
6 front of me, but I'm sure that he signed them also,  
7 Captain Kealy.

8 Q Going on to paragraph 15, it says, "In  
9 that connection, defendants agreed to retain the  
10 services of a hearing officer well known in the  
11 legal community to not only always rule in favor of  
12 the municipal corporation paid his fees, but to  
13 actually fabricate evidence to bolster his findings  
14 of facts." Do you see that?

15 A Yes.

16 Q Going to the first portion of paragraph 15  
17 where it says the defendants agreed to retain the  
18 services of a hearing officer.

19 A Yes.

20 Q What is the basis for your belief that the  
21 defendant in this case entered into such an  
22 agreement?

23 A Well, the hearing officer is picked by the  
24 department. It's not me.

1 Q Other than that, did you have any other  
2 basis for your belief that they agreed to retain  
3 that particular hearing officer?

4 A The hearing officer, to my knowledge, to  
5 my belief, has always favored the municipality that  
6 has hired him.

7 Q What is the basis for your belief in that  
8 regard?

9 MR. LOVETT: If answering that question  
10 would require him to disclose otherwise  
11 priveleged communication between you and your  
12 lawyer, I'm instructing him not to answer.

13 Q What is the basis for -- withdrawn.

14 Is it your belief that the  
15 commissioner had any information about the hearing  
16 officer's reputation before he was appointed?

17 A I believe so, yes.

18 Q What is the basis for your belief that the  
19 commissioner had that information?

20 MR. LOVETT: Same instructions as given.

21 Q Is it your belief that Deputy Commissioner  
22 Murphy had any information about this hearing  
23 officer's reputation before the hearing officer was  
24 appointed?



1           A       This was information that I spoke with my  
2 attorney.

3           Q       I'm not asking you about anything you  
4 learned from your attorney, I am asking you about  
5 what you understood these defendants to know about  
6 the hearing officer.

7           A       Again, that's information I have with my  
8 attorney.

9           Q       So am I correct that other than  
10 information you learned from your attorney, which  
11 I'm not asking you about, you had no other  
12 information about what these defendants knew about  
13 the hearing officer?

14          A       I don't understand the question. I'm  
15 sorry.

16          Q       Aside from anything you learned from your  
17 attorney, did you have any information about what  
18 these defendants knew about the hearing officer?

19          A       I believe not.

20          Q       Other than any information you may have  
21 learned from your attorney, did you personally have  
22 any information about the hearing officer?

23          A       Now?

24          Q       Yes, now.

1 A Yes.

2 Q Can you tell us what that is?

3 A It's my understanding that the hearing  
4 officer has been employed by municipalities that  
5 favors -- his decisions favors the municipalities.

6 Q What is the basis for your belief that  
7 that is the case?

8 MR. LOVETT: It may be a little late, but  
9 if answering that question would require you to  
10 disclose a communication between you and your  
11 attorney, I'm instructing you not to answer.

12 Before we go on and on the record, if you  
13 are asked a question, the answer of which would  
14 embody communication between you and me or  
15 anyone in my office, don't waive the privilege.  
16 Do not answer.

17 MR. MEISELS: Mr. Lovett, for the record,  
18 would you invoke the privilege so it's clear  
19 why he's not answering.

20 MR. LOVETT: Yeah.

21 MR. MEISELS: Fair enough.

22 Q Mr. Poggioli, other than information that  
23 you may have learned from your attorney, do you have  
24 any independent information about this hearing

1 officer?

2 A Independent?

3 Q Yes, aside from anything you learned from  
4 your attorney.

5 A So any information I have on him  
6 previously?

7 Q Or as you sit here today.

8 A Yes.

9 Q Can you tell us what that is?

10 A These were conversations I had with my  
11 attorney.

12 Q I'm asking you other than anything you  
13 learned from your lawyer. Let me rephrase the  
14 question.

15 Other than information that you  
16 learned from your lawyer, do you have any  
17 information about this hearing officer?

18 A No.

19 Q Now, going to the sub sentence B of  
20 paragraph 15 where it says, "Both Joseph and Kealy  
21 agreed with their codefendants to testify against  
22 plaintiff with a view towards terminating his  
23 employment." Do you see that?

24 A Yes.

1 Q What is the basis for your belief that  
2 Sergeant Joseph and Captain Kealy agreed with their  
3 codefendants to testify against you with a view  
4 towards terminating your employment?

5 A It's well known that the defendants have a  
6 strong dislike towards me.

7 Q Other than what you've just indicated, is  
8 there any other information that you have that would  
9 support the claim that they agreed to testify  
10 against you?

11 A Well, I ran against Officer Joseph several  
12 years ago for PBA president and I beat him in the  
13 election and to that day there has not been any good  
14 feeling from him towards me.

15 Q What is the basis for your belief that any  
16 person is seeking termination of your employment?

17 A I think there is an animosity towards me,  
18 my working at the police department, from a lot of  
19 superiors.

20 Q Am I correct that you -- there was a  
21 disciplinary hearing in this case?

22 MR. LOVETT: Object as to form. You can  
23 answer.

24 A Yes.

1 Q At the close of that hearing, did anyone  
2 ask for your termination?

3 MR. LOVETT: Objection as to form.

4 A No.

5 Q Has the city sought your termination in  
6 reference to the pending disciplinary charges?

7 MR. LOVETT: Objection as to form. You  
8 can answer.

9 A The disciplinary charges are not finished  
10 yet. They are still in limbo.

11 Q Has the hearing been closed?

12 A Yes.

13 Q When you indicate that it's in limbo, do  
14 you mean that there is -- no decision has been  
15 rendered yet?

16 A That I have been aware of, yes.

17 Q As far as you know, there has been no  
18 decision?

19 A That I have been aware of, yes.

20 Q As far as you know, so far in the  
21 proceeding has anyone asked for your termination?

22 A Well, it's not finished yet.

23 Q I understand. So far, has anyone asked  
24 for your termination?

1           A     As of now, no.

2           Q     Take a look at paragraph 16. It says,  
3     "Over a period of months, defendants then  
4     prosecuted, at a cost of substantially in excess of  
5     \$50,000, the retaliatory disciplinary proceeding,  
6     having predetermined that plaintiff will be found  
7     guilty and terminated from the city's employ." Do  
8     you see that?

9           A     Yes.

10          Q     In reference to the contention that the  
11     cost was substantially in excess of \$50,000, what  
12     was the basis for your belief that that's correct?

13               MR. LOVETT: If answering that question  
14     would require you to disclose otherwise  
15     privileged communication between you and me, I  
16     instruct you not to do it.

17          Q     Other than any information that you may  
18     have learned from your attorney, do you have an  
19     independent basis to believe that this hearing cost  
20     in excess of \$50,000?

21          A     I know what my attorney fees are with  
22     Mr. Lovett, and to think that the city had two  
23     attorneys at the hearing at the same time and all  
24     the overtime that they incurred by bringing in

1 officers that were off for prepping them and for  
2 paying the hearing officer, I would say that fee is  
3 correct.

4 Q It's an estimate on your part?

5 A Yes.

6 Q Did you incur counselor fees in defending  
7 the disciplinary hearing?

8 A Yes, I did.

9 Q How much did you incur?

10 A That's something between the attorney and  
11 myself.

12 MR. LOVETT: No, no. You can answer.

13 A I would have to check on that but I think  
14 it was \$21,000. I'm not sure. It's around there.

15 Q Referring back to paragraph 16 where it  
16 indicates, "the retaliatory disciplinary proceeding  
17 having predetermined that plaintiff will be found  
18 guilty and terminated," what was the basis for your  
19 belief that it was predetermined that you would be  
20 found guilty?

21 A The police department picks the hearing  
22 officer. Myself as being on trial as the defendant,  
23 we would have liked someone that was unbiased, that  
24 someone we would have a choice to pick from a list.

1 That wasn't the case.

2 Q Again, in reference to that phrase,  
3 "predetermined the plaintiff would be found guilty,"  
4 who made that predetermination?

5 A I would say the police department.

6 Q Anyone in particular?

7 A Administration.

8 Q Any person in particular?

9 A I would say the police commissioner and  
10 deputy police commissioner.

11 Q What is the basis for your belief that the  
12 commissioner and the deputy commissioner made that  
13 predetermination?

14 A It's well known through the department  
15 that they do not like me.

16 Q Now, in reference to the contention that  
17 it was predetermined that you would be terminated,  
18 what is the basis for your belief that it was  
19 predetermined that you would be terminated?

20 A You don't know the history of myself in  
21 the police department, sir, so it would be very  
22 difficult to tell you all the things that have  
23 happened as being PBA president for four years and  
24 the clashes that I had with the administration. It



1 would be numerous.

2 Q Is it your contention that as a result of  
3 being PBA president that they predetermined to  
4 terminate you?

5 A One of the reasons, yes.

6 Q Any other reasons that you are aware of?

7 A A lot of envy, fact that I work a lot of  
8 overtime and make substantial money, which is also  
9 involved.

10 Q Again, in reference to paragraph 16, it  
11 says, "During the course of that prosecution, Kealy  
12 was overheard by the president of the city's PBA  
13 discussing in a hallway a self-evident dilemma they  
14 faced, how to explain prosecuting plaintiff for  
15 requesting overtime money for time allegedly not  
16 worked when numerous police officers routinely  
17 engage in the same conduct with respect to which  
18 plaintiff stands accused." Do you see that?

19 Did you overhear that conversation  
20 that Captain Kealy allegedly had?

21 A No.

22 Q Can you identify who did overhear?

23 A PBA president.

24 Q Who is that person?

1 A Edward Hayes.

2 Q How did you become aware that Mr. Hayes  
3 had overheard that?

4 A He told me.

5 Q Do you recall when he told you that?

6 A Yes, it was right after the incident.  
7 Right after the occurrence.

8 Q When was that occurrence?

9 A It was in 2005.

10 Q Can you be more specific as to the date?

11 A After the disciplinary charges were --  
12 that I was charged with disciplinary charges.

13 Q Can you be more specific than that?

14 A It was after April 2005.

15 Q Do you recall when the disciplinary  
16 charges were filed?

17 MR. LOVETT: Objection as to form. You  
18 may answer.

19 A I believe May of 2005.

20 Q You were told about this after May of  
21 2005?

22 A Yes.

23 Q Do you recall how soon after May of 2005?

24 A No, I'm sorry.

1 Q Was it before the hearing commenced?

2 A Before the hearing started?

3 Q Correct.

4 A Yes.

5 Q Who is the hearing officer in this case?

6 A Mr. Ponzini.

7 Q Aside from anything that your lawyer has  
8 said to you, do you have any information about other  
9 cases on which Mr. Ponzini has presided?

10 A I might have heard something.

11 Q What information do you have, aside from  
12 anything that your lawyer told you?

13 A I don't recall if I read something in a  
14 case that he was involved in.

15 Q Was that in his capacity as a town justice  
16 or as a hearing officer?

17 A A hearing officer.

18 Q Now, in reference to the last portion of  
19 paragraph 16, and particularly in reference to the  
20 language that, "numerous police officers routinely  
21 engage in the same conduct," as you sit here today,  
22 are you aware of any particular officers who have  
23 engaged in the same conduct?

24 MR. LOVETT: Objection as to form. You

1 can answer.

2 A I don't understand by conduct.

3 Q Let's go back to paragraph 16. It says,  
4 "During the course of that prosecution, Kealy was  
5 overheard by the president of the city's PBA  
6 discussing in a hallway a self-evident dilemma they  
7 faced, how to explain prosecuting plaintiff for  
8 requesting overtime money for time allegedly not  
9 worked when numerous police officers routinely  
10 engage in the same conduct with respect to which  
11 plaintiff stands accused."

12 Regarding that paragraph, my question  
13 is, as you sit here today, are you aware of any  
14 police officers who have engaged in the same conduct  
15 with which you were accused?

16 A Of alleging not working?

17 Q Correct.

18 A Yes.

19 Q Who are they?

20 A Officer Colotti.

21 Q How do you spell that?

22 A C. O. L. O. T. T. I.

23 (Discussion held off the record.)

24 Q Officer Colotti?



1 that?

2 A I don't recall the date.

3 Q Do you recall what year that happened at?

4 A I don't recall at this time.

5 Q What is Mr. Pizola's title now?

6 A Captain.

7 Q When did he become a captain, do you  
8 recall?

9 A I don't know when he was promoted to  
10 captain.

11 Q This particular job, what -- where was it?

12 A Main Street, New Rochelle.

13 Q Who was the employer?

14 A Con Edison.

15 Q How often did Officer Colotti do that?

16 A I just know he did it that time.

17 Q Do you know whether or not that -- your  
18 allegation was investigated?

19 A I don't know.

20 Q Do you know how many hours of pay he  
21 requested for time he didn't work?

22 A I don't know.

23 Q What is the basis for your belief that he  
24 requested pay for time he didn't work?

1           A     The job was terminated at a certain point  
2 and I went in and he stayed there.

3           Q     So is it your understanding that he then  
4 requested compensation for the time that he stayed  
5 there?

6           A     Yes.

7           Q     In reference to Officer Pitsel.

8           A     Yes.

9           Q     What was the basis for your belief that he  
10 requested compensation for work that he didn't do?

11          A     He told me.

12          Q     When did he tell you that?

13          A     I believe it was the day after.

14          Q     The day after what?

15          A     The day after he allegedly worked the job.

16          Q     When was that that he allegedly worked the  
17 job?

18          A     I don't know the day.

19          Q     Do you know the year?

20          A     It was in 2005 or 2006.

21          Q     Did you report that to anybody?

22          A     The Administration was aware of it.

23          Q     What is the basis for your belief that the  
24 administration was aware of it?

1           A     I understand there was a discrepancy in  
2 paying them.

3           Q     Can you explain the discrepancy?

4           A     Well, I understand that the vendor reneged  
5 on paying them, but they eventually did get paid.

6           Q     Let me ask you again, who was the vendor?

7           A     I believe it was Con Ed.

8           Q     Could you tell me in words or substance  
9 what Officer Pitsel said to you about his having  
10 sought compensation for work he didn't do?

11          A     I believe that he told me that we worked a  
12 job yesterday or a few days ago and no one showed  
13 up, but we put in for the hours.

14          Q     When he used the word we, what was your  
15 understanding as to who that referred to?

16          A     Himself and Officer Vasquez.

17          Q     Am I correct that you did not report that  
18 conversation to anybody?

19               MR. LOVETT: Objection as to form. You  
20 can answer.

21          A     Correct.

22          Q     Other than --

23          A     I might have told Captain Pizola. I'm not  
24 sure.



1 Q Other than that particular instance, were  
2 you aware of any other occasions that Officer Pitsel  
3 requested compensation for work that he didn't do?

4 A No.

5 Q Now, regarding the third name you  
6 mentioned, Officer Vasquez, what is the basis for  
7 your belief that Officer Vasquez has requested  
8 compensation for work that he didn't do?

9 A They both put in for the overtime.

10 Q Does that refer to the same incident that  
11 you mentioned concerning Officer Pitsel?

12 A Yes.

13 Q The employer was Con Edison?

14 A I believe so, yes.

15 Q This relates to one particular day?

16 A Yes.

17 Q That was in either 2005 or 2006?

18 A Yes. I believe it was 2005.

19 Q Did Officer Vasquez ever say anything to  
20 you about it, that incident?

21 A I believe he told me that also.

22 Q When did he tell you that?

23 A Right after the incident.

24 Q Would you tell me in words or substance

1 what Officer Vasquez said to you?

2 A He went to work an off duty job and no one  
3 showed up and we stayed there and put in for the  
4 eight hours.

5 Q Based upon the conversation that you had  
6 with Officer Vasquez, was it your understanding that  
7 both he and Officer Pitsel went to an off duty job  
8 and stayed there and then put in compensation for  
9 it?

10 A And the vendor didn't show up, yes.

11 Q Did you report your conversation with  
12 Officer Vasquez to anybody?

13 A The department knew about it.

14 Q What is the basis for your belief that the  
15 department knew about it?

16 A Because Officer Pitsel told me that --  
17 something about the vendor refusing to pay but  
18 somehow they got paid.

19 Q As far as you know, they got paid for the  
20 time that they stayed there?

21 A Yes.

22 Q I understand your explanation about the  
23 department knowing, but my question is a little bit  
24 different. Did you ever report your conversation

1 with Officer Vasquez to anybody?

2 MR. LOVETT: Objection as to form. You  
3 can answer.

4 A I believe I told Captain Cozolla.

5 Q Do you recall when you did that?

6 A No.

7 Q Could you tell us in words or substance  
8 what your conversation with Captain Cozolla was?

9 A We were on the subject of talking about  
10 many things and somehow off duty became part of it.  
11 Talking back and forth and -- about different  
12 subjects. We were kind of bouncing on different  
13 things.

14 Q How soon after --

15 A See, I believe I told him. I'm not sure.

16 Q Can you estimate the amount of time that  
17 elapsed from the time that Officer Vasquez told you  
18 about it to the time you had the conversation,  
19 possibly had the conversation with Captain Cozolla?

20 A I don't recall.

21 Q Take a look at paragraph 17. "Engaging in  
22 that retaliatory plan, defendants knowingly and  
23 deliberately failed to take a law enforcement action  
24 with respect to ongoing criminal wrongdoing that

1 permeated both the police department and the New  
2 Rochelle City Court claimed by the city to be one of  
3 its departments." Do you see that?

4 A Yes.

5 Q Could you tell us as you sit here today  
6 what information you have about ongoing criminal  
7 wrongdoing in the New Rochelle Police Department,  
8 other than what your attorney may have told you?

9 A In the police department?

10 Q Correct.

11 A It's on Page 5, paragraph A.

12 Q Does that accurately include your  
13 knowledge on the subject?

14 A Yes. I was PBA president at the time.  
15 I'm very aware of it.

16 Q We are going to get to that and I know  
17 you've read the document. Other than what is  
18 enumerated here on page five, do you have any other  
19 information about wrongdoing in the police  
20 department?

21 A On previous incidents of wrongdoing, yes.

22 Q Other than what's here. Tell me what  
23 information you have about wrongdoing in the police  
24 department, other than what's mentioned on Page 5 of

1 your complaint.

2 A Another incident was a detective that was  
3 accused of stealing a cable box.

4 Q Which detective was that?

5 A Grosso.

6 Q When was he accused of stealing the cable  
7 box?

8 A I don't recall the year.

9 Q As far as you know, what was the outcome  
10 of that accusation?

11 A They took his gold shield away from him  
12 and I believe they suspended him.

13 Q Was he brought up on charges?

14 A Yes.

15 Q In addition to losing his gold shield and  
16 being suspended, was there any other penalty  
17 imposed?

18 A He was taken out of his unit. He was put  
19 into the patrol unit.

20 Q Other than the various penalties you've  
21 already mentioned, were there any other penalties  
22 imposed for that?

23 A On that particular case, I don't think so.

24 Q Now, in addition to this incident related

1 to Detective Grosso, are you aware of any other  
2 instance of wrongdoing in the police department,  
3 other than the ones you enumerated on Page 5 of your  
4 complaint?

5 A Yes.

6 Q Please tell me.

7 A Detective Landau.

8 Q What did he do?

9 A He tampered with my access card.

10 Q What was the basis for your belief that he  
11 did that?

12 A I couldn't get -- first of all, there is a  
13 dislike. He doesn't like me. And he has -- he's in  
14 charge of making these access cards. He has the  
15 capability of making -- he has access and does it.  
16 On numerous occasions, I couldn't get -- he tampered  
17 with my card, and the fact I couldn't get into the  
18 building on numerous occasions. There's a door  
19 lock.

20 Q Did you conclude that he tampered with  
21 your card because you had trouble getting into  
22 building?

23 A Well, because he was one of two people  
24 that could do that.

1 Q Who was the other person?

2 A Detective Donald. Detective Donald's a  
3 friend of mine.

4 Q What was the basis for your belief that  
5 Detective Landau did that and Detective Donald  
6 didn't do it?

7 A First of all, Detective Donald is a good  
8 friend of mine, and second of all, that when I went  
9 to him, not knowing that he did it first, and asked  
10 him to fix the problem, he did, and then it happened  
11 again. And there was an internal investigation done  
12 on that.

13 Q Do you know what the outcome of the  
14 internal investigation was?

15 A Yes.

16 Q What was it?

17 A Nothing was done.

18 Q Do you know whether or not he was ever  
19 accused of doing it?

20 A I know that I went to internal affairs  
21 Lieutenant Fortunado to make a complaint, and he  
22 said that Captain Kealy was handling it.

23 Q Do you know whether or not he was ever  
24 brought up on charges for having done that?

1           A       He was not.

2           Q       Do you know whether or not the  
3 investigation ever concluded that he did do it?

4           A       I don't know.

5           Q       If you could enlighten me about the access  
6 card that you refer to, what is the purpose of the  
7 access card?

8           A       Gains you entrance into the building.

9           Q       Isn't the police department open 24 hours  
10 a day, seven days a week?

11          A       Just the front entrance to the lobby.

12          Q       Is it correct that anyone could always  
13 walk in the front entrance to the building 24 hours  
14 a day, seven days a week?

15          A       Just in the lobby.

16          Q       Other than the incidents you mentioned  
17 with Detective Grosso and Detective Landau, are you  
18 aware of any other wrongdoing in the police  
19 department that has gone unpunished, other than what  
20 you mentioned on page five of your complaint?

21          A       There are a few others. I just don't  
22 have -- I don't remember right now.

23          Q       Again, going back to paragraph 17 of your  
24 complaint, you talk about ongoing criminal



1 wrongdoing that permeated the New Rochelle city  
2 court. Other than the incidents that are alleged on  
3 page five of your complaint, are you aware of any  
4 incidents of criminal wrongdoing in the New Rochelle  
5 city court?

6 A Besides what's on page five?

7 Q Correct.

8 A And Page 6?

9 Q Correct.

10 A No, I believe not.

11 Q Now, if we can take a look on the top of  
12 page five, sub paragraph A, it says, "Police  
13 Detective D'andrea was not arrested, criminally  
14 prosecuted or terminated by reason of disciplinary  
15 action for stealing evidence, a computer, from the  
16 department's property clerk's office and when  
17 caught, discarding the evidence in the garbage."

18 What is the basis for your belief  
19 that detective D'andrea ever stole a computer?

20 A I was involved in the negotiations as PBA  
21 president so he wouldn't get terminated.

22 Q Am I correct that you negotiated on his  
23 behalf?

24 MR. LOVETT: Objection.

1 A Yes.

2 Q In your capacity as PBA president?

3 A Yes.

4 Q Was it your understanding at the time that  
5 those negotiations were confidential?

6 A No.

7 Q Is it your understanding as you sit here  
8 today that those negotiations are confidential?

9 A No.

10 Q What was the outcome of the negotiations  
11 in reference to this incident?

12 A The police commissioner wanted him fired  
13 and I negotiated on his behalf.

14 Q What kind of deal did you get him?

15 A I believe it was 20 days suspension.

16 Q Based upon your experience as the PBA  
17 president, what does a 20 day suspension mean?

18 A Twenty days loss of pay or could be 20  
19 calendar days. It's usually 20 days of pay.

20 Q Does that mean you have to work those  
21 days, you just don't get paid for it?

22 A They usually, if you have any in the bank,  
23 vacation days or personal leave days, they usually  
24 draw out of that. If not, then you would be

1 suspended without pay. But it's up to the police  
2 commissioner's discretion. It could go either way.

3 Q At the time that you negotiated that  
4 arrangement for Detective D'andrea, was it your  
5 belief that he should have been criminally  
6 prosecuted?

7 A As PBA president, my job is not to get  
8 anybody fired or criminally prosecuted.

9 Q Let me rephrase my question. Based upon  
10 the information that you had about this incident,  
11 was it your belief that Detective D'andrea should  
12 have been criminally prosecuted?

13 A During negotiations with the police  
14 commissioner, I don't know if I was fully told of  
15 all the facts so I couldn't make a decision on that.

16 Q So as you sit here today, do you think  
17 that Detective D'andrea should have been prosecuted  
18 criminally?

19 A I don't know.

20 Q Let's go back to sub paragraph A again.  
21 It talks about, when caught, discarding the evidence  
22 in the garbage. What evidence was it that allegedly  
23 was discarded in the garbage?

24 MR. LOVETT: Objection as to form. Can

1           you read that back.

2                       (Record read back.)

3           A       I believe it was the computer.

4           Q       So was it your understanding that he stole  
5 the computer and then put it in the garbage?

6           A       It was my understanding that he signed the  
7 computer out of the property clerk's room and he  
8 took the computer and brought it home and used it.  
9 And then when the person who owned the computer  
10 asked for it back, they went to the police  
11 department and they couldn't locate it. And then  
12 they found out that he signed it out. And then when  
13 they did their investigation they asked him about  
14 it. And I believe he said that it wasn't  
15 functioning and he threw it out. That's how.

16          Q       So the basis for your belief that the  
17 computer got put in the garbage was his statement to  
18 you; is that right?

19          A       That's the information that I found out.

20          Q       How did you find that out?

21          A       Through numerous sources.

22          Q       Could you tell us what those sources were?

23          A       Through people that were heard about the  
24 case.

1 Q Could you tell us who those people were?

2 A I don't recall, no.

3 Q Did you ever speak to Detective D'andrea  
4 directly about this incident?

5 A Yes.

6 Q Did you ever ask him what happened?

7 A My job was to protect him, not to divulge  
8 into his personal --

9 Q I understand. Did you ever ask him what  
10 happened?

11 A I might have. I don't recall.

12 Q Did he ever tell you what happened?

13 A He might have. I don't recall.

14 Q Regarding the second sentence of sub  
15 paragraph A, "Subsequently, D'andrea was recruited  
16 by defendants to testify against the plaintiff in  
17 the disciplinary proceeding, was reassigned as the  
18 department's communication supervisor in charge of  
19 intradepartmental security systems."

20 When was Detective D'andrea  
21 reassigned as the department's communications  
22 supervisor?

23 A Right after that incident.

24 Q Was that part of the penalty that was

1 imposed?

2 A Evidently. The police commissioner  
3 reassigned him.

4 Q Do you recall what year he was reassigned?

5 A This was four or five years ago. I don't  
6 remember.

7 Q The incident with the computer was four or  
8 five years ago?

9 A Yes.

10 Q That would be 2003, 2002; is that right?

11 A Something like that, yes.

12 Q Is it your understanding that at that time  
13 he was recruited to testify against you in this  
14 disciplinary proceeding?

15 A At that time?

16 Q Correct.

17 A No.

18 Q As far as you know, was there any  
19 relationship between the disciplinary action taken  
20 against Detective D'andrea and the disciplinary  
21 charges that were preferred against you?

22 A At that time?

23 Q Correct. Anytime. Is there any  
24 relationship?

J. POGGIOLI

52

1           A     Detective D'andrea obviously was going to  
2 get fired by the police department and he changed  
3 his position from general investigation unit to in  
4 charge of security systems. I would think that he  
5 owes the police commissioner a lot for not having  
6 his job terminated.

7           Q     What is the basis for your belief that  
8 anyone recruited him to testify against you?

9           A     Say that again, please.

10          Q     What is the basis for your belief that  
11 anyone recruited Detective D'andrea to testify  
12 against you in the pending disciplinary proceeding?

13          A     Detective D'andrea owes a lot to the New  
14 Rochelle Police Department, he's indebted to them.  
15 He must think that any way he could help them, he  
16 would.

17                     Can I take a break?

18                     (Short recess taken.)

19                     (Record read back.)

20          Q     Mr. Poggioli, you indicated earlier that  
21 you were under the impression that the commissioner  
22 wanted to fire Detective D'andrea over this  
23 incident; is that correct?

24          A     Yes.

1 Q What was the basis for your belief that  
2 the commissioner wanted to do that?

3 A He told me.

4 Q When you negotiated on Detective  
5 D'andrea's behalf, with whom did you negotiate?

6 A Police commissioner.

7 Q Would it be you and the commissioner?

8 A Yes.

9 Q Was anyone else present when you had those  
10 negotiations?

11 A No.

12 Q How many years were you PBA president?

13 A Four.

14 Q In addition to this incident regarding  
15 Detective D'andrea, did you have occasion to  
16 negotiate with the commissioner on anything else?

17 A Of course. I negotiated a lot of things.

18 Q In that four year period, did you  
19 negotiate other disciplinaries other than the one  
20 you discussed regarding Detective D'andrea?

21 A I don't remember if there was other ones  
22 right now.

23 Q What kinds of thing, other than the  
24 disciplinaries did you negotiate with the



1 commissioner?

2 A Rules and regulations, manual, procedure,  
3 uniforms, work charts, pay off duty, overtime,  
4 court. Anything and everything.

5 Q When you say overtime, what do you mean?

6 A If someone was denied overtime for  
7 something, then I'd go and see the police  
8 commissioner about it.

9 Q When you say court, what do you mean?

10 A Court time. How much time you get for  
11 court. We get a set amount of time when you appear  
12 at court. Even if you use less time than that, you  
13 get a set time. Like show-up time.

14 Q When you negotiated references regarding  
15 court appearances, would that be circumstances where  
16 an officer complained that he or she wasn't paid  
17 enough?

18 A Something like they -- the department  
19 would say something like you are entitled to only  
20 three hours instead of three and a half for  
21 traveling time, or something like that. Because we  
22 have grand jury court up in White Plains. An  
23 officer would put down the time that they started  
24 and they finished, and sometimes it would get kicked

1 back to a lesser time 'cause they felt they weren't  
2 intact for whatever reason.

3 Q Do you recall which particular years you  
4 were PBA president?

5 A 2001 through 2004.

6 Q Is the PBA president elected on a calendar  
7 years basis?

8 A Yes.

9 Q So your term would have been up  
10 December 2004?

11 A December 31st, yes.

12 Q During that four year period --

13 A Check that on the PBA time as being  
14 president. I don't know if it was 2001 to 2004 or  
15 2000 to 2003. I'd have to check my records on that.

16 Q One or the other. You were elected; is  
17 that right?

18 A Yes.

19 Q When you are elected to be PBA president,  
20 what is the term for which you are elected?

21 A At that time, one year.

22 Q You were elected four times?

23 A Yes.

24 Q You had indicated earlier in your

3           A       Yes.  He was -- I don't know if he was a  
4       patrolman or detective at that time.

5 Q Was that the first year you were elected?

6	A	No.
---	---	-----

7 Q What year was that?

8           A       It was -- I think it was in my third year  
9       of office. Second or third year of office. I think  
10      it was my third year.

11 Q In reference to the other three times that  
12 you ran, did you have any opposition?

13 A Three times I did, one time I didn't.

14 Q In reference to the three times that you  
15 did, who were your opponents?

16           A       It was Detective Danco and I believe it  
17       was Officer Letizia, L. E. T. I. Z. I. A. I think  
18       that was the first year.

19 Q If you go back to Page 5 of your  
20 complaint, sub paragraph B, "The city marshal and  
21 attorney openly operate a private law practice out  
22 of the courthouse using, at taxpayer's expense,  
23 on duty city and state employees' services to draft  
24 his private complaints, wills and contracts."

1 A It say clients.

2 Q Let me start over again. "The city  
3 marshal and attorney openly operates a private law  
4 practice out of the courthouse using, at taxpayer's  
5 expense, on duty city and state employees' services  
6 to draft his private clients' wills and contracts  
7 for the sale of real property, stealing in that  
8 process government-owned paper, copiers, computer  
9 equipment and other office supplies." Is that  
10 accurate?

11 MR. LOVETT: Objection as to form.

12 A This is what I discussed with my attorney.

13 Q Aside from anything that you learned from  
14 your attorney, do you ever have any information  
15 about this allegation against the city marshal?

16 A No.

17 Q Once you became aware of this information,  
18 did you report it to anybody?

19 A No.

20 Q At the time you became aware of the  
21 information, you were a police officer; is that  
22 right?

23 A Which information?

24 Q The information about the city marshal.

1 A Oh, in paragraph B.

2 Q Yes.

3 A Yes.

4 Q Did you arrest him?

5 A No.

6 Q Was there a reason you didn't arrest him?

7 A I wasn't doing the investigation on that.

8 Q Do you know whether or not the city

9 marshal is employed by the police department?

10 A I believe he's not.

11 Q Take a look at sub paragraph C. "One  
12 female employed in the court clerk's office openly  
13 and admittedly has repeatedly engaged with impunity in  
14 the felonious sale of controlled substances Vicodin  
15 and Valium in that office to other employees."

16 As you sit here today, do you believe  
17 that to be true?

18 A I don't know.

19 Q What was the basis for your belief --  
20 withdrawn.

21 Do you have any reason to believe it  
22 is true?

23 MR. LOVETT: If you are answering any  
24 question which requires you to disclose other

1 privileged communication between you and me,

2 I'm instructing you not to.

3 Q Other than information that you may have  
4 learned from your attorney, do you have any  
5 information about this contention that one of the  
6 court employees was selling drugs?

7 A No.

8 Q After you learned this information, did  
9 you make an arrest?

10 A No.

11 Q Is there a reason you didn't make an  
12 arrest?

13 A That's not my investigation.

14 Q Did you report this to anybody in the  
15 police department?

16 A No.

17 Q Did you report it to anybody anyplace?

18 A No.

19 Q Let go to sub paragraph D. Let me just  
20 back up one minute and back to sub paragraph C.

21 One more question concerning the  
22 female who is the subject of the allegation, do you  
23 have any reason to believe that she's employed by  
24 the police department?

1           A     No.

2           Q     Let go to sub paragraph D. "That same  
3 female, while working in the clerk's office has also  
4 openly and admittedly engaged with impunity in  
5 felony possession of controlled substances Vicodin  
6 and Valium that have been feloniously sold to her by  
7 certain of her coworkers."

8                         As you sit here today, do you believe  
9 that allegation to be true?

10          A     This is information between the attorney  
11 and myself.

12          Q     Other than information that you learned  
13 from your lawyer, do you have any information about  
14 anyone in the court possessing drugs?

15          A     No.

16          Q     After you learned the information --  
17 withdrawn.

18                         Other than information that you  
19 learned from your lawyer, do you have any  
20 information relating to the identify of the people  
21 who are referenced in sub paragraph C and D?

22          A     Repeat that, please.

23          Q     Other than information that you learned  
24 from your lawyer, do you have any information as to

1 the identify of the court employees who are  
2 referenced in sub paragraph C and D?

3 A Are you asking me do I know who they are?

4 Q Right.

5 A Yes.

6 Q Who are they?

7 A This is information between my attorney  
8 and myself.

9 Q Is it correct that the only information  
10 that you have about the identity of these people you  
11 learned from a lawyer?

12 A Yes.

13 Q Going to sub paragraph E. "That female  
14 employee's multiple coworkers who have under oath  
15 been identified by name as having engaged in a  
16 felony sale of controlled substances to that female  
17 have neither been arrested, prosecuted nor subjected  
18 to disciplinary charges with a view towards  
19 termination."

20 As you sit here today, do you know  
21 whether that allegation is true?

22 A It's client-attorney privileged.

23 Q Is it correct the only information you  
24 have about this -- withdrawn.



1                   Would it be correct to say that other  
2                   than information that you learned from your lawyer,  
3                   you have no information about this incident?

4           A       Yes.

5                   (Short recess taken.)

6           Q       Mr. Poggioli, I'm going to ask you a few  
7                   more questions about sub paragraph E on Page 5.

8                   Do you know whether any of the people  
9                   who are referenced in sub paragraph E are employed  
10                  by the police department?

11          A       No.

12          Q       Does that mean your information is that  
13                   they are not employed by the police department as  
14                   far as you know?

15          A       To my knowledge they are not.

16          Q       After you became aware of the information  
17                   in sub paragraph E, did you arrest anybody?

18          A       No.

19          Q       Is there a reason for that?

20          A       It wasn't my investigation.

21          Q       Did you report it to anybody?

22          A       If you consider putting it in my lawsuit  
23                   reporting, than I would say yes.

24          Q       Other than putting it in your lawsuit, did

1 you call it to anyone's attention?

2 A My lawsuit got served on the commissioner,  
3 the deputy police commissioner, Captain Kealy and  
4 Sargent Joseph and the City of New Rochelle and the  
5 law department. Everything that's in here, it's  
6 spelled out. So unless they did not read this, they  
7 have to be aware of it. So yes, I did notify them  
8 through this.

9 Q Your notification came by way of this  
10 complaint?

11 A Yes.

12 Q Was there any other notification to the  
13 department about these incidents, other than the  
14 complaint?

15 A No, there's no need to.

16 Q If you could turn to page six sub  
17 paragraph F. "Another female employee working in  
18 the city court clerk's office has openly and  
19 admittedly engaged in grand larceny, stealing in  
20 excess of \$3000 from funds received by and belonging  
21 to the court, later bragging in testimony that she  
22 was never charged with that theft."

23 As you sit here today, do you believe  
24 that to be true?

1 A Yes.

2 Q What is the basis for your belief that  
3 that's true?

4 MR. LOVETT: If answering the question  
5 requires you to disclose otherwise priveledged  
6 communication between you and me, I instruct  
7 you not to answer.

8 Q Other than information that you learned  
9 from your lawyer, do you have any independent basis  
10 to believe that the allegation contain in sub  
11 paragraph F is true?

12 A Yes.

13 Q What is the basis for your belief?

14 A I believe -- my attorney-client privilege.

15 Q Let me rephrase the question. Other than  
16 what you may have learned from your lawyer, do you  
17 have any independent basis to believe that's what in  
18 paragraph F is true?

19 A Just along with the other things  
20 previously mentioned, just hear some gossip.

21 Q Who did you hear that from?

22 A Different people.

23 Q Who are they?

24 A I can't recall anybody offhand right now.

1 Just talk.

2 Q What did those people say to you about  
3 this?

4 A Something's going on in court, doing an  
5 investigation, stuff like that.

6 Q In the course of that gossip, did anyone  
7 identify who the employee was who did this?

8 A I don't recall if they mentioned names or  
9 not.

10 Q Other than information that you learned  
11 from your lawyer, do you know who did this?

12 A Through my lawyer?

13 Q No, I'm asking you other than through your  
14 lawyer, do you know who committed this crime?

15 A No.

16 Q Once you became aware of this information,  
17 did you make an arrest?

18 A No.

19 Q Is there a reason you didn't make an  
20 arrest?

21 A It's not my investigation.

22 Q Am I correct that at some point you became  
23 aware that somebody stole \$3000 from the court; is  
24 that right?

1 A Yes.

2 Q And you did not arrest that person because  
3 it was not your investigation; is that right?

4 A That's correct, it's not my investigation.

5 Q In reference to the last phrase of sub  
6 paragraph F, "they later bragging in testimony that  
7 she was never charged with the theft," what is the  
8 basis for your belief that this person gave that  
9 testimony?

10 MR. LOVETT: If answering that question  
11 will require him to disclose an otherwise  
12 priveleged communication, then don't.

13 Q Other than information you learned from  
14 your lawyer, do you know whether or not this person  
15 had ever testified concerning her theft from the  
16 court?

17 A Personally?

18 Q Yes.

19 A No.

20 Q In the gossip that you heard about this,  
21 aside from anything that you learned from your  
22 lawyer --

23 MR. LOVETT: Objection. I don't gossip.

24 MR. MEISELS: Fair enough.

1 Q -- aside from anything you got from your  
2 lawyer, did anyone tell you that this person had  
3 testified about this incident?

4 A No.

5 Q Do you know whether or not the New  
6 Rochelle Police Department ever investigated this  
7 incident?

8 A I don't know.

9 Q Did you ever ask?

10 A No.

11 Q Concerning sub paragraph G, also on page  
12 six, is, "A police detective repeatedly tampered  
13 with plaintiff's security door access card for the  
14 police department, disabling the card and preventing  
15 plaintiff from entering headquarters," does that  
16 refer to the incident that you referenced earlier  
17 concerning Detective Landau?

18 A Yes.

19 Q Let me back up one minute in reference to  
20 the person who stole the \$3000 from the court. Do  
21 you have -- withdrawn.

22 As far as you know, does that person  
23 work for the police department?

24 A No.

1 Q She's employed by -- in the city --

2 A She's employed by the City of New  
3 Rochelle.

4 Q Let's go to sub paragraph H, is "A male  
5 court officer employed in the city court has also  
6 openly and admittedly engaged in the same grand  
7 larceny committed with his now fiance, as a result  
8 of which he was never arrested, charged, and never  
9 brought up on disciplinary charges with a view  
10 towards termination."

11 Question: As you sit here today, do  
12 you believe that to be true?

13 A Yes.

14 Q What is the basis for your belief?

15 MR. LOVETT: Same instructions regarding  
16 privilege.

17 Q Other than information that you learned  
18 from your lawyer, do you have any information about  
19 this particular male court officer?

20 A No.

21 Q After you learned about this incident, did  
22 you arrest him?

23 A No.

24 Q Is there a reason for that?

1 A Yes.

2 Q What's that?

3 A It wasn't my investigation.

4 Q Did you report it to anybody?

5 A Yes, through the lawsuit people were  
6 notified.

7 Q Other than your complaint in this action,  
8 did you give any other notice to anyone about this  
9 male court officer participating in the grand  
10 larceny?

11 A No, but I think notifying the court  
12 counsel, the City of New Rochelle and the police  
13 department and the police commissioner and captain  
14 and sergeant, I would think that should pretty much  
15 do it.

16 Q Am I correct that this lawsuit was the  
17 only notice you gave to anybody about this male  
18 court officer participating in the larceny?

19 A Yes.

20 MR. LOVETT: Objection as to form.

21 Q Am I correct that that male court officer  
22 is not employed by the New Rochelle Police  
23 Department?

24 MR. LOVETT: Objection as to form.



1 A That's correct.

2 Q Do you know who he is employed by?

3 A I would imagine he's employed by the State  
4 of New York.

5 MR. LOVETT: Don't imagine.

6 A State of New York.

7 Q Aside from any information that you may  
8 have gotten from your attorney, do you know who this  
9 officer admitted his responsibility for the grand  
10 larceny to?

11 A Could you repeat that, please.

12 Q Aside from information that you may have  
13 gotten from your attorney, do have any independent  
14 information as to whom this male court officer  
15 admitted his participation in the grand larceny?

16 A No.

17 Q Do you know whether or not the New  
18 Rochelle Police Department ever conducted an  
19 investigation relating to this male court officer's  
20 participation in the grand larceny?

21 A I don't know.

22 Q Do you know who the male court officer is  
23 who supposedly did this?

24 A Yes.

1 Q Who is it?

2 A That's attorney-client information.

3 Q Other than information that you may have  
4 learned from your attorney, do you have any  
5 information related to the identify of the court  
6 officer who supposedly did this?

7 A No.

8 Q Paragraph 18. "As a proximate result of  
9 defendants' conduct, plaintiff has been subjected to  
10 retaliation for having engaged in constitutionally  
11 protected speech, selectively prosecuted, caused to  
12 suffer pecuniary losses, publicly humiliated,  
13 publicly embarrassed, suffered irreparable damage to  
14 his professional career and reputation, rendered  
15 anxious, emotionally upset and otherwise rendered  
16 sick and sore."

17 As you sit here today, do you believe  
18 that to be true?

19 A Absolutely.

20 Q Let's take a look at the first two  
21 sentences. "As a proximate result of defendants'  
22 conduct, plaintiff has been subjected to retaliation  
23 for having engaged in constitutionally protected  
24 speech."

1                   What is your understanding of the  
2                   constitutionally protected speech that you're  
3                   referring to in your complaint?

4           A       Numerous times as PBA president I publicly  
5           went on television, radio, and in front of city  
6           council chambers and criticized the police  
7           department, police commissioner, for numerous things  
8           during contract negotiations, labor disputes,  
9           problems within the police department. It was  
10          public, it was aired on television on several  
11          stations, radio stations, in the paper, through the  
12          citizens, council chambers.

13          Q       Am I correct that it's your contention  
14          that it's that speech for which you are being  
15          retaliated against?

16                   MR. LOVETT: Objection as to form.

17          A       Those speeches.

18          Q       Speeches.

19          A       Numerous.

20          Q       Do you have any record of those speeches?

21          A       No, but the City of New Rochelle does.

22          Q       Where would the city have those records?

23          A       Well, the citizens to be heard. That's  
24          all documented.

1 Q Where is that documented?

2 A In New Rochelle. City of New Rochelle  
3 would have that. It's all documented when you get  
4 in front of a city council and speak.

5 Q You mean in the minutes of the meetings?

6 A Yes.

7 Q Do you recall any particular meeting in  
8 which you appeared?

9 A Several.

10 Q Can you tell us when they were?

11 A During the contract disputes, during those  
12 years, or during my term as PBA president.

13 Q So am I correct that these are comments  
14 that you made in your capacity as PBA president?

15 MR. LOVETT: Objection to the form.

16 A Yes.

17 Q Was this in the course of negotiating  
18 contract on behalf of PBA?

19 A Sometimes.

20 Q Were there any other contacts other than  
21 contract negotiations where you appeared in front of  
22 the city council?

23 A Yes.

24 Q What were they?

1           A       Just let the city council know the -- what  
2       the police department was doing to their membership,  
3       members of the PBA. I advised them.

4           Q       When did that occur?

5           A       During my tenure as PBA president.

6           Q       Am I correct that those speeches were  
7       given in your capacity as PBA president?

8           MR. LOVETT: Objection as to form.

9           A       Yes.

10          Q       They were given while you were PBA  
11       president?

12          A       Yes. I may have given a speech or so when  
13       I wasn't PBA president. I don't recall. Also.

14          Q       Would that have been before you became PBA  
15       president?

16          A       Yes.

17          Q       So that would have been, what, 2000, 2001?

18          A       Yes. 'cause I was on the executive board  
19       prior to being president. Yes, prior to.

20          Q       Referring to paragraph 18 again, "As a  
21       proximate result of defendants' conduct, plaintiff  
22       has been subjected to retaliation for having engaged  
23       in constitutionally protected speech, selectively  
24       prosecuted."

1                    Could you explain the basis for your  
2 belief that you were being selectively prosecuted?

3            A        Well, I got charged for coming to an off  
4 duty job an hour late. Meanwhile, other officers  
5 haven't gotten charged for more serious infractions,  
6 crimes.

7            Q        Are you aware of any circumstances where  
8 other officers have not been charged with more  
9 serious crimes, other than those you have already  
10 testified to today?

11           A        There might be a few others. I can't  
12 recall.

13           Q        Tell me what they were.

14           A        I can't recall right now.

15           Q        Can you recall the names of the people who  
16 were involved in those incidents?

17           A        I already mentioned those to you, the ones  
18 that I can recall.

19           Q        It says, "caused to suffer pecuniary  
20 losses. What -- withdrawn.

21                    What pecuniary losses have you  
22 suffered?

23           A        Can you repeat that.

24           Q        It says, "As a result of defendants'

1 conduct, plaintiff has been subjected to retaliation  
2 for having engaged in constitutionally protected  
3 speech, selectively prosecuted, caused to suffer  
4 pecuniary losses."

5 My question is: What, if any,  
6 pecuniary losses have you suffered as a result of  
7 the alleged conduct on behalf of the defendants?

8 A Can I take a break?

9 (Short recess taken.)

10 (Record read back.)

11 A The police department is like a big Peyton  
12 Place of New Rochelle. Everybody knows everybody  
13 else's business. And when someone is brought up on  
14 charges, everyone knows about it.

15 Since these charges have been brought  
16 up against me in May of 2005, everybody has heard  
17 something of it, especially the supervisors. And  
18 the supervisors don't want to step on any of the  
19 higher-ups.

20 So if there is an opportunity to not  
21 give me overtime so I can't make additional money,  
22 at times I felt that that was done.

23 Q Can you identify any specific times where  
24 that happened?

1 A Either July or August of 2006.

2 Q What happened then?

3 A There was tremendous amount of overtime on  
4 the third tour. Tremendous. And I didn't get any  
5 of it.

6 Q Has your income from --

7 A From the third tour. From the third tour  
8 supervisors. I don't think I got any overtime at  
9 all.

10 Q In what months was that?

11 A I think it was either July or August 2006.

12 Q Other than that particular incident, can  
13 you identify any others where this supposedly  
14 occurred?

15 A There is a rule that came out and it was  
16 supposed to be uniformed overtime and they were  
17 supposed to go on a list, the superior officers were  
18 supposed to pick a list, have a list, and give it to  
19 the officers in the order of where you are on the  
20 list. And the list is not kept accurately, not kept  
21 at all. Omissions are made, sometimes by my  
22 personal line of my jobs that I was put down that I  
23 worked and I didn't work.

24 Q When did that occur?



1 A Since 2005. Since this list came out.

2 Q Was your income from the New Rochelle  
3 Police Department in 2005 less than it was in 2004?

4 A I don't know. I'd have to look at my  
5 records.

6 Q Was your income from the New Rochelle  
7 Police Department in 2006 less than it was in 2004?

8 A We didn't get our W-2s yet this year so I  
9 don't have my accurate amount that I made last year.  
10 Even those it's February 1st and you are supposed to  
11 get it January 31st. No one got it.

12 Q I realize you don't have an exact number,  
13 but is it your impression that your income from 2006  
14 was less than it was in 2004?

15 MR. LOVETT: Objection as to form. You  
16 can answer.

17 A Well, in 2005 we started having our off  
18 duty work done through the department. So in 2005  
19 it would be higher than 2004 because all off duty  
20 work went through the department.

21 Q Is it your impression that your --  
22 withdrawn.

23 Is it your impression that your  
24 income from the New Rochelle Police Department in

1 2006 was less than it was in 2005?

2 MR. LOVETT: Objection as to form. You  
3 can answer.

4 A I would think, since there was more off  
5 duty in 2006 than 2005, I think my income is higher  
6 in 2006 than 2005.

7 Q Other than the circumstances that you just  
8 mentioned, are you aware of any other pecuniary  
9 losses that you suffered as a result of the  
10 defendants' conduct?

11 A All monetary income is gained through  
12 working off duty overtime, so my contention is that  
13 I've been penalized and that's why I didn't make as  
14 much as I could have and I wasn't getting the  
15 overtime I should have.

16 Q Other than that circumstances that you  
17 identified in July or August of 2005, can you  
18 identify any other specific incidents where that  
19 occurred?

20 A That was the only occurrence. That  
21 happened the whole month.

22 Q Do you have an estimate as to how much  
23 income you lost as a result of that incident?

24 A No.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

4  
5  
6  
7  
8

9  
10

11  
12  
13  
14  
15

16  
17  
18  
19

20

21

22

23

24

1           A     I can't say for sure, but it seems like  
2     when you have that feeling that people know that  
3     something is going on with you, you kind get a  
4     sense, if you will.

5           Q     Has anyone outside the police department  
6     ever discussed these disciplinary charges with you,  
7     other than your lawyer?

8           A     My wife.

9           Q     Other than your lawyer and your wife.

10          A     I don't think so. I take that back.  
11     There was -- the former mayor of New Rochelle came  
12     up to me and he said that he heard there is some  
13     kind of charges brought against you. And I think  
14     maybe some attorneys also. I'm not sure about that.

15          Q     Which former mayor was that?

16          A     Ripley.

17          Q     When did he have that conversation with  
18     you?

19          A     I saw him last year sometime.

20          Q     Meaning 2006?

21          A     Yes.

22          Q     Do you recall when in 2006?

23          A     I'm sorry.

24          Q     Can you tell us in words or substance what

1 he said to you and what you said to him in that  
2 conversation?

3 A He said, I hear that the department  
4 brought up charges against you, what's going on and  
5 why are they doing this.

6 Q What did you say to him?

7 A I said, it's typical of New Rochelle  
8 Police Department. He nodded his head and agreed.

9 Q Was there somebody else who discussed this  
10 with you who is outside the police department,  
11 besides the former mayor?

12 A Yes, he's the Commissioner of Veterans  
13 Affairs, Ronald Tocher. He heard also.

14 Q How did you become aware that he had heard  
15 about it?

16 A He saw me and asked me.

17 Q When did that occur?

18 A Last year, I believe.

19 Q In 2006?

20 A Yes.

21 Q Do you recall when in 2006 you had that  
22 conversation?

23 A I'm sorry, I don't.

24 Q Can you tell me in words or substance what

1 Mr. Tocher said to you and what you said to him  
2 about it?

3 A Something like, Joe, I hear that they're  
4 coming after you again, some nonsense, something  
5 like that. I don't know the exact words.

6 Q What did you say to him?

7 A I said, that's right, Ron, they are.

8 Q Other than Mayor Ripley and Mr. Tocher,  
9 have any other members of the public discussed these  
10 charges with you?

11 A There might have been a few other people.  
12 I can't recall right now.

13 Q Going back to paragraph 18 where it  
14 indicates, "As a proximate result of defendants'  
15 conduct, the plaintiff had been publicly  
16 embarrassed." Is that public embarrassment the  
17 incidents that you just already testified about?

18 A Yes, it's embarrassing when people come up  
19 to you and say, I hear there is charges brought  
20 against you.

21 Q It says, "suffered irreparable damage to  
22 his professional career and reputation." Has your  
23 professional career been affected at all by these  
24 charges?







1 Q Did you provide that?

2 A Yes.

3 Q How many specific things did you apply for  
4 in writing?

5 A A few. I don't know exactly how many.  
6 It's kind of like an open-ended thing, any kind of  
7 schooling that could further my education and my  
8 career in the police department, I would be  
9 interested in.

10 Q You put that all in writing?

11 A Yes.

12 Q You still have copies of whatever you put  
13 in writing?

14 A Yes.

15 Q Did you get a response to your requests?

16 A No.

17 Q Did anyone ever tell you they were not  
18 going to let you participate in professional  
19 schooling?

20 A Captain Pizola said one time that since my  
21 tenure on the police department, they wanted to get  
22 more bang for the buck. So I took that as of  
23 because of my age and my time in the police  
24 department, that I wasn't going to get any more

1 schooling or any other classes to further my  
2 education and my career.

3 And furthermore, that was when I  
4 personally did ask him about it and I did request to  
5 go for schooling, that was his response.

6 Q When did you have that conversation?

7 A After submitting a request to go to the  
8 school.

9 Q What school did you request to go to?

10 A I don't recall.

11 Q When did you submit the request?

12 A When it was due.

13 Q When was it due?

14 A I don't know the time frame. It was  
15 either 2005 or 2006. I believe it was 2006.

16 Q You did that in writing?

17 A Yes, I did.

18 Q You still have a copy of it?

19 A Absolutely. Another incident, I requested  
20 to be a field training officer in which you teach  
21 rookies different ways of becoming a police officer  
22 in the New Rochelle Police Department. I requested  
23 to be a field training officer and put that in  
24 writing to Captain Kealy.

1 Q When did you do that?

2 A I believe that came out a few months ago.  
3 I believe it was September but don't hold me to  
4 that. I have that in writing also.

5 Q So it was the fall of 2006?

6 A I believe it was, yes.

7 Q Did you get a response?

8 A No.

9 Q Have you ever discussed it with him?

10 A He really doesn't talk to me.

11 Q Have you ever tried to speak to him about  
12 it?

13 A No.

14 Q Do you know of any other officers were  
15 sent for field -- do you know if any other officers  
16 were sent for training as a field training officer  
17 after you submitted your request?

18 A Yes.

19 Q Who was that?

20 A Officer Vincent Marco and Officer  
21 Navarrette, N. A. V. A. R. R. E. T. T. E., and there  
22 was another officer, Officer -- I don't know his  
23 name. There was three.

24 Q What is a field training officer?

1           A     Field training officer is when a rookie  
2 gets out of the police academy and goes with the  
3 field training officer and the field training  
4 officer actually guides the probationary officer.  
5 They go on different calls together, they go through  
6 all different forms, they go through the different  
7 procedures and everything that is expected of a  
8 police officer, they try to groom them into what the  
9 New Rochelle Police Department wants.

10                     It's interesting to see that they  
11 picked three relatively brand new police officers  
12 that just got out themselves.

13           Q     Was it your understanding that Officer  
14 Navarrette just got on the job?

15           A     Not too long ago, but he hasn't been on  
16 too long.

17           Q     Is there any additional compensation  
18 involved in becoming a field training officer?

19           A     Yes, there is.

20           Q     What is that?

21           A     I believe it's a \$1200 stipend. I'm not  
22 sure on that amount. \$1200 bonus. Twelve hundred,  
23 1500, something like that.

24           Q     Have you ever asked anyone in the

department for an explanation as to why you were not assigned to become a field training officer?

A        If the request went to Captain Kealy I didn't expect a request for him or an explanation. He hardly talks to me now. Why would he give me an explanation.

Q Have you ever asked anyone in the police department for an explanation as to why you were not assigned to become a field training officer?

A Well, he picks the field training officers so I knew that I wasn't going to get a reply. So I knew it was just dead right there.

Q So am I correct that when you made the request, it was your anticipation that it would not be granted?

MR. LOVETT: Objection as to form.

A I figured it wouldn't be granted.

Q So you knew that before you even filed it?

A Well, I mean, I wanted it to be and I took the shot. I was the most experienced out of the officers that applied, having 26 plus years in the department. I figured that I would possibly get it so obviously I had to apply for it.

And when Captain Kealy came down to

1 roll call, he specifically said that he was  
2 interested in senior officers applying for it  
3 because not enough senior officers applied for it.  
4 Myself being a senior officer, I applied for it but  
5 three junior officers got it.

6 Q Do you know why you didn't get it?

7 A He doesn't like me. Obviously went by  
8 personal views and not by talent, experience.

9 Q Referring back to paragraph 18 concerning  
10 the damage to your professional career, am I correct  
11 that your income from the New Rochelle Police  
12 Department in 2006 was higher than your income from  
13 the police department in any other year?

14 MR. LOVETT: Objection as to form. You  
15 can answer.

16 A I would probably say yes. The off duty  
17 work.

18 Q Back to paragraph 18, the last sentence on  
19 the page. "Rendered anxious, emotionally upset and  
20 otherwise rendered sick and sore." Have you sought  
21 any treatment for your emotional problems?

22 A That's a confidential question.

23 MR. LOVETT: You can answer.

24 A Professionally?

1 Q Have you sought treatment for the  
2 emotional upset referenced in your complaint?

3 A Professionally?

4 Q Any treatment.

5 A Oh, any treatment.

6 Q For it, profession or otherwise?

7 A Yes.

8 Q Can you explain what that was?

9 A I speak to God about it.

10 Q Is that something you do every day?

11 A Yes.

12 Q What form does that take?

13 A It helps me cope.

14 Q When do you do that?

15 A When I feel I have to.

16 Q Does that happen at least once a day?

17 A Sometimes.

18 Q Does it happen more than once a day?

19 A Sometimes.

20 Q In what form do you do that?

21 A The privacy of where I'm at.

22 Q Do you verbalize the conversation?

23 A Do I speak out loud?

24 Q Correct.

1 A No.

2 Q In addition to speaking to God about it,  
3 have you sought any other assistance in reference to  
4 your emotional issues?

5 A No, not yet.

6 Q Are you planning to do it?

7 A I'm thinking about it, yes.

8 Q Have you consulted with anybody about it?

9 A Just my wife.

10 Q Now, other than the anxiety that you  
11 reference in your complaint, have you suffered any  
12 other emotional injuries that you think are related  
13 to the disciplinary charges that were preferred  
14 against you?

15 A Could you rephrase that, please.

16 Q Other than the anxiety that you've  
17 referenced in the complaint, have you suffered any  
18 other emotional injuries that you believe resulted  
19 from the disciplinary charges that were preferred  
20 against you?

21 A Yes.

22 Q Could you tell us what those were?

23 A Since this had been hanging over my head  
24 since May of 2005 and no action has been taken, it's



1 something that's been detrimental to my family life,  
2 to my children, to my wife. I'm much more  
3 irritable. My wife says that I have less patience  
4 with my children, I yell at them a lot, and she  
5 feels that this has to do with the possible  
6 termination of my employment.

7 Since I have four children and one  
8 wife, one salary, I'm the breadwinner, and it takes  
9 an emotional strain on not only myself but my wife  
10 and my four children.

11 Q Other than what you've already mentioned,  
12 is there anything else that you suffered in terms of  
13 emotional injury?

14 A I'm obviously very concerned about the  
15 outcome of this. It's something that I occasionally  
16 get migraine headaches, affects me with my life in  
17 general.

18 Q Have you sought treatment for the migraine  
19 headaches?

20 A No.

21 Q Did anyone in the New Rochelle Police  
22 Department ever convey to you the department's  
23 willingness to settle these disciplinary charges?

24 A You mean in a penalty?

1 Q Correct.

2 A Yes.

3 Q When did that occur?

4 A After the charges were served on me.

5 Q Who conveyed that information to you?

6 A Lieutenant Fortunato.

7 Q What did he tell you?

8 A He wanted a, I believe a thirty day  
9 suspension and a six month suspension of off duty  
10 work.

11 Q What did you understand that to mean?

12 A That it would have been very difficult for  
13 me to provide for my family, my four children and my  
14 wife, if that happened.

15 Q What did you understand the thirty days  
16 suspension to mean?

17 A Thirty days loss of pay.

18 Q Did you have enough accumulated time so  
19 that you could provide the thirty days?

20 A What do you mean by time?

21 Q Did the department owe you any time at the  
22 time they made that offer to you?

23 A Well, they owe you vacation. Is that what  
24 you're talking about?

1 Q How much vacation do you get every year?

2 A 20 days.

3 Q Did you understand that to be calendar  
4 days or work days?

5 A Paid days.

6 Q You understood it to --

7 A I'm sorry, calendar days.

8 Q Thirty calendar days. And the six month  
9 suspension from off duty work, would that mean that  
10 you just wouldn't get assigned to any off duty work  
11 for six months?

12 A Yes.

13 Q Am I correct that that would really relate  
14 to off duty work that's assigned through the  
15 department?

16 MR. LOVETT: Objection to form.

17 A All off duty work is assigned through the  
18 department.

19 Q You are not allowed to do any off duty  
20 work unless it's assigned through the department?

21 A Off duty work, yes, that's correct, unless  
22 it comes from the department.

23 Q Are police officers permitted to have  
24 other employment other than departmental employment

1 that don't come through the department?

2 A It has to be approved by the police  
3 commissioner.

4 Q But they are allowed to do; is that  
5 correct?

6 A If it's approved by the police  
7 commissioner and only a certain amount of hours per  
8 week.

9 Q Did you respond --

10 (Discussion held off the record.)

11 Mr. Poggioli, when an officer is  
12 suspended in reference to some disciplinary charges,  
13 is he permitted to participate in non departmental  
14 employment?

15 A I don't know.

16 Q Did you ever ask?

17 A No.

18 Q I think I have finally gotten through your  
19 complaint. I have some other questions. It will  
20 take about an hour and a half or so.

21 (Discussion held off the record.)

22 Q Mr. Poggioli, do you know a person by the  
23 name of Gina Lapore?

24 A Yes.

1 Q Who is she?

2 A She works for the court.

3 Q Do you know how long she worked for the  
4 court?

5 A No.

6 Q Did you ever -- withdrawn.

7 Did you have dealings with her in  
8 reference to her employment with the court?

9 A Sure I have.

10 Q As far as you know, what did she do in the  
11 court?

12 A I don't know her exact title.

13 Q Do you know what functions she  
14 participated in?

15 A No.

16 Q You saw her there?

17 A She worked in the court.

18 Q Did you ever have occasion to talk to her  
19 about any cases that you had on in court?

20 A I could have. I don't recall.

21 Q As -- in reference to cases that you had  
22 in court -- withdrawn.

23 Did she ever -- withdrawn.

24 As far as you know, did she have any

1 responsibility relating to the cases that you had on  
2 in court as a police officer?

3 A I don't know.

4 Q Am I correct that in your 27 years as a  
5 police officer, you've issued traffic tickets; is  
6 that correct?

7 MR. LOVETT: Objection as to form.

8 A Yes.

9 Q Did those cases -- withdrawn.

10 Are those tickets returnable in the  
11 New Rochelle city court?

12 A Yes.

13 Q In reference to traffic tickets that  
14 you've issued as a police officer, have you ever had  
15 occasion to talk to Gina Lapore?

16 A I don't recall.

17 Q Have you ever had occasion to have to  
18 testify in city court in reference to traffic  
19 tickets that you've issued?

20 A Yes.

21 Q Do you get paid overtime for that?

22 A If I'm not scheduled to work at that time.

23 Q Am I correct that you work the third  
24 shift; is that right?

1 MR. LOVETT: Objection as to form.

2 A Yes.

3 Q Is that four to 12?

4 A Yes.

5 Q How long have you been working the four to  
6 12 shift?

7 A I could only guess.

8 MR. LOVETT: Don't guess.

9 A Approximately six or seven years.

10 Q In that six or seven year period when  
11 you've testified in court, would that have been off  
12 duty time?

13 A Not always.

14 Q Can you explain the circumstances when it  
15 would not have been off duty time?

16 A Sometimes they have trials while you're  
17 working or scheduled while you were working.

18 Q Do you have trials that were scheduled  
19 after 4:00 o'clock?

20 A Usually at 4:00 o'clock.

21 Q At 4:00 o'clock.

22 A That's the scheduled time.

23 Q Am I correct that some of the trials would  
24 be scheduled before 4:00 o'clock?

1 MR. LOVETT: Objection as to form.

2 A Yes.

3 Q When you had to appear before  
4 4:00 o'clock, did you receive overtime?

5 A If I wasn't scheduled to work that day.

6 Q If you were scheduled to work that day,  
7 would you get overtime if you appeared before  
8 4:00 o'clock?

9 A If I was scheduled to work during the day  
10 and the trial was during the day, I would not get  
11 overtime. Sometimes my schedule changed to  
12 whatever.

13 Q In the last six or seven years, did you  
14 ever work any other tour of duty other than the four  
15 to 12 shift?

16 A Yes.

17 Q When was that?

18 A I don't have the date readily available,  
19 but yes.

20 Q Did you ever talk to Gina Lapore about  
21 disciplinary charges that were brought against her?

22 A I don't think so, no.

23 Q Did you ever talk to Gina Lapore about the  
24 disciplinary charges that had been brought against



1 you?

2 A No.

3 Q Did you ever talk to Gina Lapore about her  
4 lawsuit against the City of New Rochelle?

5 A I believe not.

6 Q Did you ever talk to Gina Lapore about  
7 your lawsuit against the City of New Rochelle?

8 A I believe not.

9 Q Did you ever talk to Gina Lapore about her  
10 termination from employment with the City of New  
11 Rochelle?

12 A I believe not.

13 Q Over than through conversations with your  
14 attorney, did you ever become aware of any testimony  
15 that was given at her disciplinary hearing?

16 A No.

17 Q Did you ever have any discussions with  
18 Gina Lapore in reference to scheduling trials where  
19 you were the officer who issued traffic tickets?

20 A Can you repeat that again, please.

21 Q Did you ever have any conversations with  
22 Gina Lapore in reference to the scheduling of trials  
23 concerning traffic tickets that you had issued as a  
24 police officer?

1 A I believe not.

2 Q I'm going to call your attention to  
3 April 20, 2005, the date of the alleged special duty  
4 assignment. Did you sign in for that assignment?

5 A Yes.

6 Q Did you sign out for the assignment?

7 A Yes.

8 Q Now, on that particular day, were you  
9 present at the New Rochelle police headquarters at  
10 approximately 1:00 o'clock in the afternoon?

11 A I don't know the time of the assignment.

12 Q During the course of the assignment, did  
13 you have occasion to come back to the New Rochelle  
14 police headquarters?

15 A I believe you asked me that question.

16 Q Tell me what the answer is.

17 A I think I said I believe not.

18 Q I'm going to show you what's been marked  
19 as Defendants' B for identification and ask you if  
20 you can identify that document. Can you identify  
21 the document, do you know what it is?

22 A No.

23 Q Have you ever seen it before?

24 A I might have.

1 Q Do you recall when that was?

2 A During the departmental trial, if I saw  
3 it.

4 Q Was that the first time you saw it?

5 A If I saw it, yes.

6 Q I'm going to show you what's been  
7 premarked as Defendants' C for identification. I'm  
8 going to ask you if you can identify that document.

9 (Witness perusing documents.)

10 A It's a copy of P.D. 37.

11 Q Have you seen this document before?

12 A I might have seen it during the trial.

13 Q Was that the first time you saw it?

14 A If it was during the trial, yes.

15 Q You didn't see it before your hearing?

16 A Before the department trial?

17 Q Correct.

18 A No.

19 Q I'm going to show you what's been  
20 premarked as Defendants' D for identification and  
21 ask you if you can identify that document.

22 A It's a copy of the P.D. 59D.

23 Q What is a P.D. 59D?

24 A It's an off duty sheet you sign in and

1 sign out.

2 Q Is this the sheet that you signed in on  
3 for -- withdrawn.

4 Is this the sheet in which you signed  
5 out for the off duty assignment on April 20, 2005?

6 A No, not this sheet.

7 Q I'm sorry. Let me rephrase the question.  
8 Referring to Defendants' Exhibit D for  
9 identification, is this a copy of the sheet on which  
10 you signed out for your off duty employment on  
11 April 20th, 2005?

12 A A copy, yes.

13 Q Looking at the third signature from the  
14 bottom, is that a copy of your signature?

15 A Yes.

16 Q Going across towards the right, under job  
17 hours it says 1200 to 1600. Can you identify that  
18 handwriting?

19 A That's my handwriting.

20 Q In reference to the -- going back to the  
21 left where it says Coligni dash Webster, is that  
22 your handwriting as well?

23 A Yes.

24 Q Going back to the right under the column

1 that says time out 12:00 o'clock, is that your  
2 handwriting?

3 A Yes.

4 Q And then continuing to the right where it  
5 says time in, 1530, is that your handwriting?

6 A Yes.

7 Q Under the column that says radio 116, is  
8 that your handwriting?

9 A Yes.

10 Q Continuing to the right under the column  
11 that says supervisor out, there appears to be  
12 nothing in that column. Do you know why there is  
13 nothing in that column?

14 A No.

15 Q Continuing to the right, there seems to be  
16 a signature under the column that says supervisor  
17 in; is that correct?

18 A Yes.

19 Q Can you identify that handwriting?

20 A No.

21 Q When you signed out for this assignment,  
22 was there anybody working the desk that day?

23 A Oh, I'm sure somebody was working the  
24 desk.

1 Q Under the column where it says supervisor,  
2 what did you understand that to mean?

3 MR. LOVETT: Objection. There are two  
4 such columns.

5 MR. MEISELS: Counsel is correct. I'll  
6 withdraw the question.

7 Q Under the column that says supervisor out,  
8 what did you understand that to mean?

9 A The supervisor signs off -- signs off on  
10 that you came in.

11 Q Who was the supervisor that day?

12 A I don't know.

13 Q How does a person who's working a off duty  
14 assignment know who the supervisor is?

15 A Usually the supervisor's there.

16 Q When you signed out for that job, was  
17 there a supervisor there?

18 A I didn't see one, no.

19 Q When you signed in, was there a supervisor  
20 there?

21 A Yes.

22 Q Do you recall who it was?

23 A I believe it was Lieutenant Childs, C. H.  
24 I. L. D. S.

1 Q I'm going to show you what's been  
2 premarked as Defendants' E for identification and  
3 ask you if you can identify that document?

4 A I cannot.

5 Q Have you ever seen it before?

6 A I don't recall. No, I don't think I have.

7 Q Did you ever learn during the course of  
8 your disciplinary hearing or otherwise that the  
9 police department had a record indicating that you  
10 had entered the back door at approximately  
11 1:00 o'clock in the afternoon?

12 MR. LOVETT: Objection as to form.

13 A No. I don't --

14 Q You never learned that?

15 A I'm sorry, can you repeat that again.

16 Q During the course of your disciplinary  
17 hearing or at any other time, did you ever learn  
18 that the New Rochelle Police Department had a record  
19 that suggested that you had entered the back door of  
20 the police department at approximately 1:00 o'clock  
21 in the afternoon on April 20th, 2005?

22 MR. LOVETT: Objection as to form. You  
23 can answer.

24 A They -- I know they have a record of your

1 access card and when that access card is, if it's  
2 working right, used when you come in and go out --  
3 not when you go out, when you come in.

4 Q Did you ever learn at any time that the  
5 access -- your access card was not working properly  
6 on April 20th, 2005?

7 A I don't know if it was working accurately  
8 that day.

9 Q I'm going to show you what has been  
10 premarked as Defendants' F for identification.

11 A Thank you.

12 Q And ask you if you can identify that  
13 document.

14 A Yes.

15 Q Tell me what it is.

16 A It's a form that when -- you sign whether  
17 or not you want to waive your right to  
18 representation.

19 Q Look at the lower left hand corner. Is  
20 that a copy of your signature?

21 A Yes, it is.

22 Q Do you recall having signed this document?

23 A Yes.

24 Q Do you recall when you signed it?



A I don't recall, but if we go by the date  
it was May 6th, 2005.

Q Were you interviewed in reference to the circumstances that led to the pending disciplinary charges?

**A** Yes.

Q Did that occur on or about May 6, 2005?

A If this form is correct, I would say so,  
yes.

Q Who was present at the interview?

A Captain Kealy and I believe Sargent Joseph.

Q And yourself of course?

**A** Yes.

Q There were just three people present?

**A** Yes.

Q Can you tell me in words or substance what Captain Kealy said to you?

A That they were investigating a complaint  
and he was doing a investigation.

Q Did he tell you what the complaint was?

**A** Yes.

Q What did he say?

A Pertaining to my off duty job on April 20,

1 I think he said.

2 Q Before you met with Captain Kealy and  
3 Sargent Joseph, were you aware that there was an  
4 investigation?

5 A No.

6 Q Was this the first time you learned that  
7 there was a question about the off duty assignment?

8 A Yes.

9 Q In words or substance, did Captain Kealy  
10 say anything to you other than what you've already  
11 testified to?

12 A No, just that he was doing an  
13 investigation.

14 Q Did he ask you for an explanation as to  
15 what happened?

16 A It is pretty much one-sided. Captain  
17 Kealy was pretty much directing the investigation.  
18 I was just answering questions. It's kind of  
19 peculiar that the investigation be done 16 days  
20 after the initial incident.

21 Q Did he ask you any questions?

22 A I'm sure he did, yes.

23 Q Do you recall what those questions were?

24 A No, I don't.

1 Q Did you answer the questions?

2 A Of course.

3 Q What answers did you give him?

4 A Whatever questions he asked me.

5 Q As you sit here today, do you recall what  
6 you told him about the incident?

7 A I don't remember the questions so I  
8 couldn't remember what I told him about the  
9 incident.

10 Q Do you know whether or not the  
11 conversation was taped?

12 A Two times I was called into his office and  
13 one time was definitely taped. I don't remember  
14 which one it was.

15 Q The second time was after May 6th?

16 A I don't remember if this was the first  
17 time or the second time.

18 Q Let's go back to the May 6th meeting. Did  
19 Sargent Joseph say anything at the meeting?

20 A No.

21 Q So am I correct that all the conversation  
22 was between you and Captain Kealy?

23 MR. LOVETT: Objection as to form. You  
24 can answer.

1 A Yes.

2 Q You were the only two people that said  
3 anything; is that right?

4 A Yes.

5 Q Other than what you've already testified  
6 to, do you recall anything else Captain Kealy said  
7 to you during that meeting?

8 A I remember he asked me for my memo book  
9 and I had to go back out and get that.

10 Q Can you explain what a memo book is.

11 A A memo book is a book that consists of 50  
12 pages that we write down date, time, job duties,  
13 calls, officers and so on and so forth, and he  
14 requested that.

15 And then I brought it into him and he  
16 looked at it and then he shut the tape recorder off  
17 and Sargent Joseph went out and made a copy of it  
18 and came back.

19 Q So there was a tape recorder?

20 A Yes, but I don't remember which time,  
21 whether it was the first or second time.

22 Q Other than what you've testified to, was  
23 there any other conversation with Captain Kealy at  
24 that meeting?

1           A     Like I said, he asked me questions and I  
2 answered them.

3           Q     But you don't remember what they were?

4           A     No.

5           Q     I'm going to show you what's been  
6 premarked as Defendants' Exhibit G for  
7 identification and ask you if you can identify that  
8 document?

9           A     Yes.

10          Q     What is it?

11          A     It's a copy of my pages from my memo book.

12          Q     Are these the pages that refer to  
13 assignments that you received on April 20th, 2005?

14          A     No.

15          Q     What do they refer to?

16          A     It refers to on -- looks like April 11, my  
17 tour on duty.

18          Q     If you could turn to the second page of  
19 the exhibit, does the second page of the exhibit  
20 refer to assignments that you received on April 20,  
21 2005?

22          A     Yes, when I was working. Yes.

23          Q     Is this your handwriting?

24          A     Yes.

1 Q Could you read what the notations say  
2 under April 20th, 2005?

3 A Yes.

4 Q Could you read and would you?

5 A It says, April 20th, '05. Wednesday,  
6 third tour, 1600 to 2400. Sector seven and then  
7 radio car seven, radio number seven and meal at 1900  
8 hours, 1749 hours, Rose Hill Avenue, animals call,  
9 and 1915 hours, 1063. That's a code. Then 1945  
10 hours, 1098, that's a code that came back to  
11 service. And then 2253 hours Webster and Parcot,  
12 P. A. R. C. O. T., personal welfare. Then 2345,  
13 it's N. F. T. R., nothing further to report, and  
14 then I scribbled my name.

15 Q Am I correct there is no notation as to  
16 any off duty assignment?

17 MR. LOVETT: Object as to form.

18 A Correct.

19 Q At the time that you maintained this memo  
20 book back in April 2005, what was your understanding  
21 as to whether or not off-duty assignments should be  
22 noted in your memo book?

23 A I don't recall.

24 Q Was it your practice in 2005 to note off

1 duty assignments in your memo book?

2 A I don't recall.

3 Q Do you still have the memo book?

4 A Yes.

5 Q I'm going to show you what's been  
6 premarked as Defendants' H for identification.

7 A Thank you.

8 Q Can you identify that document?

9 A Yes, it's a copy of the overtime slip.

10 Q Looking at the upper third on the right  
11 hand side, is that a copy of your signature?

12 A Yes.

13 Q Is this a request that you submitted to  
14 the department?

15 A Yes.

16 Q Am I correct that you requested  
17 compensation for three and a half hours of time?

18 MR. LOVETT: Objection to form. You can  
19 answer.

20 A Yes.

21 Q Referring to the upper third of the  
22 Exhibit A -- of Exhibit H, is that -- in reference  
23 to the top-third, is everything that's handwritten  
24 done in your handwriting?

1 A On the top half?

2 Q The top third.

3 A The top third.

4 Q Yes?

5 A Yes.

6 Q So in terms of time where it says from  
7 12:00 p.m. to 1530 p.m; is that your handwriting?

8 A Yes.

9 Q Looking in the fourth line down, it says,  
10 "appeared in" and then there is something written.  
11 What does that say?

12 A Pre-staffed.

13 Q Is that your handwriting?

14 A Yes.

15 Q What does that mean?

16 A I was assigned to that.

17 Q Your shield number is 5801?

18 A No.

19 Q Who wrote in 5801?

20 A I did.

21 Q Why would you have written in a number  
22 that's not your shield number?

23 A Because we use our employee number to get  
24 paid in that.



1 Q That's your employee number?

2 A Yes, these forms were never changed so we  
3 use those.

4 Q Going to the middle of the page, there's a  
5 line that said verified by court/desk officer.

6 A Yes.

7 Q Do you recognize the person who signed  
8 that?

9 A I believe it's Lieutenant Childs.

10 Q Then under that it says verified by  
11 division commander, do you recognize that  
12 handwriting?

13 A I would think it would be Captain Cozolla.  
14 No, it couldn't be. It looks like an L. T. It's  
15 lieutenant something. I don't know what it is.

16 Q I'm going to show you what has been  
17 premarked as Defendants' I for identification. Can  
18 you identify that document?

19 A Yes.

20 Q What is that?

21 A These are the charges and the  
22 specifications from Captain Kealy against myself.

23 Q Are these the charges and specifications  
24 in reference to which you had a hearing?

1 A I'll going to have to read it over.

2 Q Okay.

3 A Do you want me to read it?

4 Q Sure, take a look.

5 A But I don't know if this is exactly what I  
6 was charged with.

7 Q Even if you read it over now, you wouldn't  
8 know if this was the same thing?

9 A Right.

10 Q Were you given a copy of the charges?

11 A Yes.

12 (Discussion held off the record.)

13 Q I'm going to show you what's been  
14 premarked as Defendants' J for identification.

15 A Thank you.

16 Q And ask you if you can identify that  
17 document.

18 (Witness perusing documents.)

19 A This is something, a copy of something  
20 that Mr. Troetti, T. R. O. E. T. T. I., which is the  
21 PBA attorney, sent back as a reply. I have to read  
22 it.

23 Q Have you ever seen it before?

24 A I probably have. I just don't remember

1 it. There's so many papers involved. I'm sure I  
2 saw it but I don't know if this is a true copy.

3 Q Do you know whether you saw this answer  
4 before it was sent back by Mr. Troetti?

5 MR. LOVETT: Objection as to form. You  
6 can answer.

7 A Clarify. Before Mr. Troetti sent it?

8 Q Correct.

9 A I might have. He might have sent me a  
10 copy prior to. I don't remember.

11 Q I'm going to show you what has been  
12 premarked as Defendants' K for identification and  
13 ask you if you can identify that document.

14 (Witness perusing documents.)

15 A This is a P.D. 37, copy of a P.D. 37.

16 Q Have you ever seen it before?

17 A I saw it at the trial.

18 Q Was that the first time I saw it?

19 A I believe so, yes. Yes, I'm pretty sure  
20 that was the first time.

21 Q In reference to your special duty  
22 assignment on April 20, 2005, who was the person in  
23 charge of the Persico contracting job site?

24 A Of that particular job site it was

1 Mr. Canaro.

2 Q Prior to April 20th, 2005, had you met  
3 Mr. Canaro before?

4 A This is wrong. It doesn't say Canaro on  
5 here.

6 Q I'm asking for your recollection. Don't  
7 get confused by the documents. I'm asking for your  
8 recollection.

9 A I don't know if this document is correct,  
10 because it doesn't have Mr. Canaro's --

11 MR. LOVETT: Answer his question.

12 Q Let me ask it again. Prior to April 20th,  
13 2005, had you met with Mr. Canaro?

14 A I don't recall.

15 Q Had you worked a special duty assignment  
16 for Persico Contracting before April 20th, 2005?

17 A Probably, yes.

18 Q Did there ever come a time that you  
19 prepared a letter for Mr. Canaro to sign?

20 A Yes.

21 Q Did you talk to him about the substance of  
22 the letter before you prepared it?

23 A Yes.

24 Q What did you say to him and what did he

1 say to you about that letter?

2 A I said that the department's alleging that  
3 I came here late to the job site and that I'm going  
4 to -- I got to answer it so I'm going to type  
5 something up. If you think it's accurate, if you  
6 would sign it.

7 Q When did you have that conversation with  
8 him?

9 A I don't recall the date.

10 Q Obviously after April 20th, am I correct?

11 A Yes.

12 Q Was it after you had disciplinary charges  
13 preferred against you?

14 A I don't think so, no.

15 Q Before that?

16 A Yes.

17 Q At the time you had that conversation with  
18 him, were you in uniform?

19 A I might have been, I don't remember.

20 Q Do you recall the time of day you had that  
21 conversation with him?

22 A Time of day, no.

23 Q After that conversation you then prepared  
24 the letter; am I correct?

1	A	Yes.
---	---	------

2 Q Did you type it yourself?

3 A Yes.

4 Q You did that at home?

5 A I don't recall where I did it.

6 Q Then you brought the letter to him?

7	A	Yes.
---	---	------

8 Q At the Persico Contracting site?

9           A       Might have been. I don't remember exactly  
10   where.

11 Q Have you ever met with him in any place  
12 other than the Persico Contracting site in New  
13 Rochelle?

14 A Maybe. I don't remember.

15 Q Other than your dealings with him on  
16 April 20th, 2005 and your conversations concerning  
17 this letter, have you had any other dealings with  
18 him?

19           A       I worked for the company but I don't think  
20   I worked for him directly.

21 Q When did you work for the company?

22           A     I don't know.  Department records would  
23   have that.

24 Q These were all special duty assignments?

1 A Yes.

2 Q Was the job site the same place, at  
3 Webster and Coligni?

4 A No.

5 Q What other job sites did you work at?

6 A It could be anywhere in New Rochelle,  
7 anywhere that they needed someone.

8 Q When you returned with the letter, were  
9 you in uniform?

10 A You asked me that already.

11 Q No, I asked you when you first discussed  
12 the letter were you in uniform. Now my question is  
13 separate: When you came back with the letter after  
14 you prepared it, were you in uniform?

15 A I don't recall. I don't recall.

16 Q When you came back with the letter, tell  
17 me in words or substance what you said to him and  
18 what he said to you?

19 A I said, I typed this up, if you think it's  
20 accurate, if you don't mind signing it. Please sign  
21 it. And he read it, he said, I have no problem with  
22 this, it's all accurate, and he signed it.

23 Q What did you do with the letter after he  
24 signed it?

1 A I eventually gave it to Captain Kealy.

2 Q Do you recall when Mr. Canaro signed the  
3 letter?

4 A No.

5 Q Do you recall when you gave it to Captain  
6 Kealy?

7 A It was shortly thereafter. I don't know.  
8 I'm sorry.

9 Q Referring back to April 20th, 2005, were  
10 you in fact present at police headquarters at  
11 approximately 1:00 o'clock in the afternoon?

12 A No. I was at the job site.

13 Q During the disciplinary hearing, did you  
14 view a video of what occurred at the front desk of  
15 the New Rochelle Police Department on April 20th,  
16 2005?

17 A It wasn't the front desk, but yes.

18 Q Where was it of?

19 A It was the booking desk.

20 Q I apologize. I'm sorry.

21 Were you depicted in that video?

22 A It looks like me. But I usually wear a  
23 hat, I didn't see a hat.

24 Q I'm going to show you what's been



1 premarked as Defendants' L for identification and  
2 ask you if you can identify that document.

3 (Witness perusing documents.)

4 A It's a copy of an overtime slip that's cut  
5 off on the top.

6 Q I'm going to ask you if you can compare  
7 that to what we already showed you as Defendants' H  
8 for identification. Do you have that?

9 A Yes.

10 Q I notice on Defendants' L there is no  
11 stamp. It says special P.D.P. 148.3, while on H  
12 there is. Do you have any information as to why  
13 that one has that stamp and the other one doesn't?

14 A No, I have no knowledge of that.

15 Q In reference to Defendants' L, the last  
16 one that I gave you, if you look at the upper-third  
17 of the page, is that a copy of your signature?

18 A Yes.

19 (Short recess taken.)

20 Q Mr. Poggioli, this morning you testified  
21 in reference to the police department's practices  
22 relating to special duty assignments. Is there a  
23 maximum amount of time that a police officer is  
24 permitted to work overtime? Is there any limit on

1 the amount of overtime you are allowed to work?

2 MR. LOVETT: Objection as to form. You  
3 can answer.

4 A There is a difference between departmental  
5 overtime and special duty overtime.

6 Q Could you explain to me what the  
7 differences are?

8 A Departmental overtime would be if there is  
9 a staff shortage.

10 Q Is there a limit on how much departmental  
11 overtime a police officer is permitted to work?

12 A No.

13 Q In terms of special duty assignments, is  
14 there a limit on how much overtime police officers  
15 are permitted to work?

16 A Yes.

17 Q What is that?

18 A Twenty hours per week.

19 Q How long has that limitation been in  
20 effect?

21 A I don't know.

22 Q It would be more than a few years?

23 A Yes.

24 Q Can you recall back to a time when that

1 limitation did not apply?

2 A It pretty much only came into play when we  
3 started to get a lot of off duty. Many years ago we  
4 didn't have the off duty jobs that we have now  
5 there.

6 Q Do you recall approximately when it came  
7 into play?

8 A It may have always been there, but I don't  
9 know.

10 Q Now, in 2006, how many hours of special  
11 duty assignments did you receive?

12 A Did I receive or did I work?

13 Q Did you work?

14 A I don't keep records of that. The police  
15 department has records of that.

16 Q Do you know whether or not you averaged  
17 close to 20 hours a week?

18 A Some weeks, yes.

19 Q So there was some weeks when you got the  
20 max?

21 A Yes.

22 Q Would it be correct that you received the  
23 max most weeks?

24 MR. LOVETT: Objection as to form. You

1 can answer.

2 A I don't know if that would be correct, no.

3 Q Do you know of anybody in the department  
4 who received more special duty assignments than you  
5 did?

6 A I don't have people's records. I don't  
7 know.

8 Q Do you know if anybody in the department  
9 in 2006 worked more special duty assignments than  
10 you did?

11 A No, I have no knowledge of that.

12 Q Do you know for 2006 if anyone in the  
13 department worked more special duty hours than you  
14 did?

15 A I have no knowledge of that. I don't have  
16 those records. The police department has those  
17 records.

18 Q In reference to 2005, did you use any sick  
19 days?

20 A None.

21 Q In reference to 2006, did you use any sick  
22 days?

23 A None.

24 Q Did you receive any compensation or bonus

1 for not using sick days in 2006?

2 A Yes, there's a contractual stipulation on  
3 that.

4 Q Do you recall what that was?

5 A It's about a thousand dollars. It might  
6 be 12 hundred, I'm not sure. It's in the contract.

7 Q Did you receive any compensation for not  
8 using sick days in 2005?

9 A Yes.

10 Q Do you recall what that was?

11 A It was -- I think it was pretty much the  
12 same amount, like a thousand, 1200, something like  
13 that.

14 Q In reference to the special duty  
15 assignment that you received on April 20th, 2005,  
16 when were you first aware of the assignment?

17 A I believe I was called that morning. It  
18 was like a last minute detail.

19 Q Do you recall who called you?

20 A I'm pretty sure it was Sargent  
21 Mergenthaler, M. E. R. G. E. N. T. H. A. L. E. R.

22 Q Is Sargent Mergenthaler retired?

23 A Yes.

24 Q Did he call you at home?

1           A     I don't remember if he called me at home  
2 or on my cell phone.

3           Q     Where were you when you received the call?

4           A     In New Rochelle. Wait a minute. It  
5 couldn't have been in New Rochelle because I don't  
6 live in Rochelle. I don't recall. He either called  
7 me at home or on my cell phone, and if he called me  
8 on my cell phone, I might even have been home. But  
9 I don't recall.

10          Q     Where do you live?

11          A     Carmel.

12          Q     How long does it take you to get from your  
13 home to the New Rochelle police headquarters?

14          A     About 40, 45 minutes.

15          Q     You don't recall what time he called?

16          A     No.

17          Q     Can you tell me in words or substance what  
18 he said to you when he did call you?

19          A     Something like there is an off-duty job  
20 today. I think he called me that day. Maybe he  
21 called me the day before. He pretty much gave me  
22 the specifics of the job, where it was, what job it  
23 was, location.

24          Q     Did he say anything else to you other than

1 give you the specifics?

2 A He asked me if I would take it.

3 Q What did you say to him?

4 A I said yes.

5 Q Did he say anything about having  
6 difficulty about filling the job or anything of that  
7 sort?

8 A I recall something like it just came in.  
9 It was a last minute job. He always called me  
10 because I'd take anything. I was very reliable.  
11 Something like it just came in or he has to fill it  
12 tomorrow or something. I don't remember.

13 MR. MEISELS: I need five minutes with my  
14 clients and we may be finished.

15 (Short recess taken.)

16 MR. MEISELS: No further questions.

17 (Time noted: 3:05 P.M.)

133

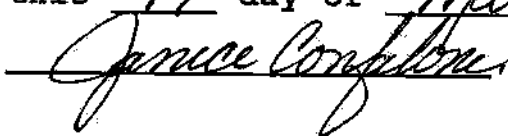
WITNESS CORRECTION SHEET

PAGE \ LINE \ CORRECTION

  
JOSEPH A. POGGIOLI

Subscribed and sworn to before me

this 19 day of March, 2007

 Notary Public  
NICE M. CONFALONE  
Notary Public, State of New York  
No. 4608008  
Qualified in Westchester County  
Commission Expires November 18, 2009

VERITEXT/NEW YORK REPORTING COMPANY

212-267-6868

516-608-2400



1 STATE OF NEW YORK )

2 ) SS:

3 COUNTY OF WESTCHESTER)

4 I, JOSEPH A. POGGIOLI, a PLAINTIFF, do  
5 hereby certify that having been first duly  
6 sworn to testify to the truth, the whole truth,  
7 and nothing but the truth, gave the above  
8 deposition, which was recorded stenographically  
9 and reduced to this original transcript.

10 I FURTHER CERTIFY that the foregoing  
11 transcript of the said deposition is a true and  
12 correct transcript of the testimony given by me at  
13 the time and place specified herein before.

14 I FURTHER CERTIFY that any corrections  
15 or changes to this testimony have been made by me on  
16 the page provided for that purpose captioned  
17 "Witness's Correction Sheet," which has also been  
18 signed by me before a Notary Public.

19  
20   
JOSEPH A. POGGIOLI

21 Subscribed and sworn to before me this 19 day  
22 of March 2007.

23  Notary Public.

24 JANICE M. CONFALONE  
Notary Public, State of New York  
No. 4958908  
Qualified in Westchester County  
Commission Expires November 13, 2009 09

C E R T I F I C A T I O N

I, RUTHAYN SGAGLIO, a Court Reporter  
and Notary Public within and for the State  
of New York, do hereby certify:

That the witness whose deposition  
is herein before set forth, was duly sworn  
by me, and that the within transcript is a  
true record of the testimony given by such  
witness.

I further certify that I am not  
related to any of the parties to this action  
by blood or marriage, and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 28<sup>th</sup> day of February, 2007.

  
RUTHAYN SGAGLIO

**EXHIBIT 4**